

Introduced by Senator Gaines

February 24, 2012

An act to amend ~~and repeal Section 22352 of the Vehicle Code, relating to vehicles~~ 1656.1 of the Civil Code, and to amend Sections 6026, 17073, 17552, 17731.5, 18401, 18402, 18403, 18405, 18413, 18414, 18417, 18510, 18535, 18621, 18622, 18633, 18662, 18666, 18668, 19001, 19007, 19009, 19041.5, 19043, 19043.5, 19054, 19057, 19063, 19066, 19066.5, 19071, 19101, 19132, 19141.5, 19142, 19144, 19145, 19147, 19164, 19164.5, 19169, 19173, 19179, 19184, 19195, 19201, 19202, 19221, 19222, 19254, 19255, 19280, 19290, 19301, 19313, 19314, 19340, 19371, 19374, 19377, 19441, 19443, 19501, 19503, 19504, 19504.5, 19512, 19521, 19525, 19533, 19542.1, 19547, 19549, 19563, 19565, 19566, 19570, 19591, 19604, 19701, 19702, 19705, 19706, 19712, 19772, 19777, and 19801 of, to amend and repeal Sections 6356.5, 6356.6, 6357.1, 6357.7, 6358.5, and 6378 of, to add Sections 6002.5, 6208, 7108, 9508, 17039.3, 17041.3, 17064, 17938, 17947.5, 17948.5, 18612, 18613, 19011.7, 19029, 19030, 19135.5, 19139, 19141.8, 19188, 23005, and 35004 to, to add Article 2.5 (commencing with Section 17100) to Chapter 3 of Part 10 of Division 2 of, to add Article 3 (commencing with Section 18421) to Chapter 1 of, to add Article 2.5 (commencing with Section 18611) to Chapter 2 of, and to add Article 2.5 (commencing with Section 19028) to Chapter 4 of, Part 10.2 of Division 2 of, to add Chapter 3 (commencing with Section 7227) to Part 1.5 of, to add Chapter 3 (commencing with Section 7239) to Part 1.55 of, to add Chapter 5 (commencing with Section 7279.8) to Part 1.6 of, to add Chapter 3.8 (commencing with Section 7293) to Part 1.7 of, to add Chapter 13 (commencing with Section 8527) to Part 2 of, to add Chapter 10 (commencing with Section 9356) to Part

3 of, to add Chapter 8 (commencing with Section 11703) to Part 6 of, to add Chapter 5 (commencing with Section 11936) to Part 6.7 of, Chapter 9 (commencing with Section 16952) to Part 9.5, to add Chapter 11 (commencing with Section 38909) to Part 18.5 of, and to add Chapter 12 (commencing with Section 60710) to Part 31 of, Division 2 of, to add Part 12 (commencing with Section 27001) to Division 2 of, to repeal Sections 17039.1, 17087.5, 17733, 18633.5, 19061, 19149, 19164.1, and 19365 of, to repeal Chapter 1 (commencing with Section 6001) of Part 1 of Division 2 of, to repeal Article 1 (commencing with Section 6051) of Chapter 2 of Part 1 of Division 2 of, to repeal Article 1 (commencing with Section 6201) of Chapter 3 of Part 1 of Division 2 of, to repeal Chapter 2.1 (commencing with Section 17062), Chapter 10.5 (commencing with Section 17935), Chapter 10.6 (commencing with Section 17941), and Chapter 10.7 (commencing with Section 17948), of Part 10 of Division 2 of, to repeal Part 1.5 (commencing with Section 7200), Part 1.55 (commencing with Section 7231), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 4 (commencing with Section 9501), Part 6 (commencing with Section 11201), Part 6.7 (commencing with Section 11901), and Part 9.5 (commencing with Section 16700), Part 15 (commencing with Section 35001), Part 18.5 (commencing with Section 38101), and Part 31 (commencing with Section 60001) of Division 2 of, to repeal and amend Section 18407 of, and to repeal and add Chapter 9 (commencing with Section 7108) of Part 1 of Division 2 of, the Revenue and Taxation Code, and to repeal Section 976.6 of the Unemployment Insurance Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1376, as amended, Gaines. ~~Vehicles: prima facie speed limits:~~
*Sales and use taxes: transaction and use taxes: excise taxes: Business
 Net Receipts Tax Law: corporate tax repeal: income taxes: rates:
 deduction: credits: AMT: annual tax: employment training tax.*

~~Existing~~

(1) Existing law provides that the prima facie speed limit is 15 miles per hour under certain circumstances, including when on any alley or traversing a railway grade crossing or highway without a clear unobstructed view, as specified, and 25 miles per hour under other

specified circumstances involving a highway in a business or residence district, school buildings, and senior centers or facilities. Existing law requires that the prima facie speed limit be applicable unless changed as authorized in the Vehicle Code and, if so changed, only when signs have been erected giving notice of that speed limit. Violation of these provisions is a crime *imposes a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Existing law also imposes, or authorizes the imposition of, various taxes, including local sales and use taxes, local transactions and use taxes, the Motor Vehicle Fuel License Tax Law, the Use Fuel Tax Law, the Local Motor Vehicle Fuel Taxation Law, the Private Railroad Car Tax Law, the Documentary Transfer Tax Act, the Generation Skipping Transfer Tax, local subscription television taxes, the Timber Yield Tax Law, and the Diesel Fuel Tax Law.*

~~This bill would make technical, nonsubstantive changes to these provisions~~ would, beginning January 1, 2013, repeal the imposition of, or the authority to impose, the above-mentioned taxes.

(2) *The Personal Income Tax Law imposes taxes on taxable income at specified rates based upon the amount of taxable income. That law allows various deductions and credits in computing income subject to taxation, and also imposes an alternative minimum tax in modified conformity with federal income tax laws.*

This bill would, for taxable years beginning on or after January 1, 2013, impose a single tax rate of 5.8%, allow itemized deductions only for specified items, disallow specified credits, and repeal the alternative minimum tax. This bill would, for taxable years beginning on or after January 1, 2013, eliminate a specified annual tax and fee imposed on limited partnerships, limited liability partnerships, and limited liability companies, as provided.

(3) *This bill would establish the Business Net Receipts Tax Law pursuant to which a tax would be imposed on specified business entities at a rate of an unspecified percentage of net receipts, as defined, for the taxable year. That law would provide specified exemptions, deductions, and credits in computing the tax.*

This bill would also provide specified conforming administrative provisions and transfer of rules for certain business entities.

(4) Existing law imposes a 0.1% tax on employers, as defined, on the first \$7,000 of wages paid to each employee in a calendar year, and deposits the revenues derived therefrom into the Employment Training Fund.

This bill would repeal the imposition of this tax.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(6) This bill would take effect immediately as a tax levy.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California's long-term prosperity requires that employers
4 and entrepreneurs invest, remain, and grow in the state and that
5 workers desire to live in the state.

6 (b) California's current tax system was designed for the
7 economy of the last century. Meanwhile, California's economy
8 has changed significantly, shifting from a primarily manufacturing-
9 and agriculturally-based economy to an information- and
10 innovation-based economy.

11 (c) This bill would establish a new tax structure that better fits
12 with the state's economy by reducing and removing tax burdens
13 by imposing a flat tax rate on individual taxpayers, establishing
14 a business net receipts tax, removing the sales and use taxes
15 imposed at the state and local level, and removing some of the
16 business tax burdens on businesses within the state.

17 (d) It is imperative that the Legislature continue to identify and
18 remove unnecessary tax burdens on businesses within the state.

19 SEC. 2. Section 1656.1 of the Civil Code is amended to read:

20 1656.1. (a) Whether a retailer may add sales tax reimbursement
21 to the sales price of the tangible personal property sold at retail to
22 a purchaser depends solely upon the terms of the agreement of
23 sale. It shall be presumed that the parties agreed to the addition of

sales tax reimbursement to the sales price of tangible personal property sold at retail to a purchaser if:

(1) The agreement of sale expressly provides for such addition of sales tax reimbursement;

(2) Sales tax reimbursement is shown on the sales check or other proof of sale; or

(3) The retailer posts in his or her premises in a location visible to purchasers, or includes on a price tag or in an advertisement or other printed material directed to purchasers, a notice to the effect that reimbursement for sales tax will be added to the sales price of all items or certain items, whichever is applicable.

(b) It shall be presumed that the property, the gross receipts from the sale of which is subject to the sales tax, is sold at a price which includes tax reimbursement if the retailer posts in his or her premises, or includes on a price tag or in an advertisement (whichever is applicable) one of the following notices:

(1) "All prices of taxable items include sales tax reimbursement computed to the nearest mill."

(2) "The price of this item includes sales tax reimbursement computed to the nearest mill."

(c) (1) The State Board of Equalization shall prepare and make available for inspection and duplication or reproduction a sales tax reimbursement schedule which shall be identical with the following tables up to the amounts specified therein:

4 ³/₄ percent

Price	Tax
.01– .10 .....	.00
.11– .31 .....	.01
.32– .52 .....	.02
.53– .73 .....	.03
.74– .94 .....	.04
.95–1.15 .....	.05

5 percent

Price	Tax
.01– .09 .....	.00
.10– .29 .....	.01
.30– .49 .....	.02
.50– .69 .....	.03

1	.70– .89 .....	.04
2	.90–1.09 .....	.05
3		
4	5 ¹ / ₄ percent	
5	Price	Tax
6	.01– .09 .....	.00
7	.10– .28 .....	.01
8	.29– .47 .....	.02
9	.48– .66 .....	.03
10	.67– .85 .....	.04
11	.86–1.04 .....	.05
12		
13	5 ¹ / ₂ percent	
14	Price	Tax
15	.01– .09 .....	.00
16	.10– .27 .....	.01
17	.28– .45 .....	.02
18	.46– .63 .....	.03
19	.64– .81 .....	.04
20	.82– .99 .....	.05
21	1.00–1.18 .....	.06
22		
23	5 ³ / ₄ percent	
24	Price	Tax
25	.01– .08 .....	.00
26	.09– .26 .....	.01
27	.27– .43 .....	.02
28	.44– .60 .....	.03
29	.61– .78 .....	.04
30	.79– .95 .....	.05
31	.96–1.13 .....	.06
32		
33	6 percent	
34	Price	Tax
35	.01– .08 .....	.00
36	.09– .24 .....	.01
37	.25– .41 .....	.02
38	.42– .58 .....	.03
39	.59– .74 .....	.04
40	.75– .91 .....	.05

1	.92–1.08 .....	.06
2		
3	6 ¹ / ₄ percent	
4	Price	Tax
5	.01– .07 .....	.00
6	.08– .23 .....	.01
7	.24– .39 .....	.02
8	.40– .55 .....	.03
9	.56– .71 .....	.04
10	.72– .87 .....	.05
11	.88–1.03 .....	.06
12		
13	6 ¹ / ₂ percent	
14	Price	Tax
15	.01– .07 .....	.00
16	.08– .23 .....	.01
17	.24– .38 .....	.02
18	.39– .53 .....	.03
19	.54– .69 .....	.04
20	.70– .84 .....	.05
21	.85– .99 .....	.06
22	1.00–1.15 .....	.07
23		
24	6 ³ / ₄ percent	
25	Price	Tax
26	.01– .07 .....	.00
27	.08– .22 .....	.01
28	.23– .37 .....	.02
29	.38– .51 .....	.03
30	.52– .66 .....	.04
31	.67– .81 .....	.05
32	.82– .96 .....	.06
33	.97–1.11 .....	.07
34		
35	7 percent	
36	Price	Tax
37	.01– .07 .....	.00
38	.08– .21 .....	.01
39	.22– .35 .....	.02
40	.36– .49 .....	.03

1	.50– .64 .....	.04
2	.65– .78 .....	.05
3	.79– .92 .....	.06
4	.93–1.07 .....	.07
5		
6	7 ¹ / ₄ percent	
7	Price	Tax
8	.01– .06 .....	.00
9	.07– .20 .....	.01
10	.21– .34 .....	.02
11	.35– .48 .....	.03
12	.49– .62 .....	.04
13	.63– .75 .....	.05
14	.76– .89 .....	.06
15	.90–1.03 .....	.07
16		
17	7 ¹ / ₂ percent	
18	Price	Tax
19	.01– .06 .....	.00
20	.07– .19 .....	.01
21	.20– .33 .....	.02
22	.34– .46 .....	.03
23	.47– .59 .....	.04
24	.60– .73 .....	.05
25	.74– .86 .....	.06
26	.87– .99 .....	.07
27	1.00–1.13 .....	.08
28		

29 (2) Reimbursement on sales prices in excess of those shown in
 30 the schedules may be computed by applying the applicable tax
 31 rate to the sales price, rounded off to the nearest cent by eliminating
 32 any fraction less than one-half cent and increasing any fraction of
 33 one-half cent or over to the next higher cent.

34 (3) If sales tax reimbursement is added to the sales price of
 35 tangible personal property sold at retail, the retailer shall use a
 36 schedule provided by the board, or a schedule approved by the
 37 board.

38 (d) The presumptions created by this section are rebuttable
 39 presumptions.

1 (e) *This section shall remain in effect only until January 1, 2013,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2013, deletes or extends that date.*

4 SEC. 3. *Section 6002.5 is added to the Revenue and Taxation*
5 *Code, to read:*

6 6002.5. *On and after January 1, 2013, except where the context*
7 *requires, any reference to “this part” is modified to read “Section*
8 *35 of Article XIII of the California Constitution.”*

9 SEC. 4. *Section 6026 of the Revenue and Taxation Code is*
10 *amended to read:*

11 6026. For purposes of this act:

12 (a) “Agreement” means the Streamlined Sales and Use Tax
13 Agreement.

14 (b) “Board” means the board of governance, as defined in this
15 act, or the board’s designee.

16 (c) “Certified automated system” means software certified
17 jointly by the states that are signatories to the agreement to
18 calculate the tax imposed by each jurisdiction on a transaction,
19 determine the amount of tax to remit to the appropriate state, and
20 maintain a record of the transaction.

21 (d) “Certified service provider” means an agent certified jointly
22 by the states that are signatories to the agreement to perform all
23 of the seller’s sales tax functions.

24 (e) “Person” means an individual, trust, estate, fiduciary,
25 partnership, limited liability company, limited liability partnership,
26 corporation, or any other legal entity.

27 (f) “Sales tax” means the tax levied by ~~Chapter 2 (commencing~~
28 ~~with Section 6051) of Part 1 of Division 2 of the Revenue and~~
29 ~~Taxation Code paragraph (1) of subdivision (b) of Section 35 of~~
30 ~~Article XIII of the California Constitution.~~

31 (g) “Purchaser” means a person to whom a sale of tangible
32 personal property is made or to whom a service is provided.

33 (h) “Seller” means any person making sales, leases, or rentals
34 of personal property of services.

35 (i) “Sourcing” means determining the tax situs of a transaction.

36 (j) “State” means any state of the United States and the District
37 of Columbia.

38 (k) “Signatory state” means a state that has entered into the
39 agreement.

1 (l) “Use tax” means the tax levied by ~~Chapter 3 (commencing~~
2 ~~with Section 6201) of Part 1 of Division 2 of the Revenue and~~
3 ~~Taxation Code~~ paragraph (2) of subdivision (b) of Section 35 of
4 Article XIII of the California Constitution.

5 SEC. 5. Section 6056 is added to the Revenue and Taxation
6 Code, to read:

7 6056. This Article shall remain in effect only until January 1,
8 2013, and as of that date is repealed, unless a later enacted statute,
9 that is enacted before January 1, 2013, deletes or extends that
10 date.

11 SEC. 6. Section 6208 is added to the Revenue and Taxation
12 Code, to read:

13 6208. This article shall remain in effect only until January 1,
14 2013, and as of that date is repealed, unless a later enacted statute,
15 that is enacted before January 1, 2013, deletes or extends that
16 date.

17 SEC. 7. Section 6356.5 of the Revenue and Taxation Code is
18 amended to read:

19 6356.5. (a) There are exempted from the taxes imposed by
20 this part the gross receipts from the sale of, and the storage and
21 use of, or other consumption in this state of, farm equipment and
22 machinery, and the parts thereof, purchased for use by a qualified
23 person to be used primarily in producing and harvesting agricultural
24 products.

25 (b) For purposes of this section, both of the following shall
26 apply:

27 (1) “Qualified person” means any person engaged in a line of
28 business described in Codes 0111 to 0291, inclusive, of the
29 Standard Industrial Classification Manual published by the United
30 States Office of Management and Budget, 1987 Edition, and any
31 other person that uses farm equipment and machinery to assist this
32 person in the lines of business described in this paragraph in
33 producing and harvesting agricultural products.

34 (2) “Farm equipment and machinery” means implements of
35 husbandry, as defined in Section 411.

36 (c) (1) Notwithstanding any provision of the Bradley-Burns
37 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
38 with Section 7200)) or the Transactions and Use Tax Law (Part
39 1.6 (commencing with Section 7251)), the exemption established
40 by this section does not apply with respect to any tax levied by a

1 county, city, or district pursuant to, or in accordance with, either
2 of those laws.

3 (2) Notwithstanding subdivision (a), the exemption established
4 by this section does not apply with respect to any tax levied
5 pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35
6 of Article XIII of the California Constitution.

7 (d) The exemption provided by this section shall be effective
8 starting September 1, 2001.

9 (e) *This section shall remain in effect only until January 1, 2013,*
10 *and as of that date is repealed, unless a later enacted statute, that*
11 *is enacted before January 1, 2013, deletes or extends that date.*

12 SEC. 8. Section 6356.6 of the Revenue and Taxation Code is
13 amended to read:

14 6356.6. (a) There are exempted from the taxes imposed by
15 this part the gross receipts from the sale of, and the storage and
16 use of, or other consumption in this state of, equipment and
17 machinery designed primarily for off-road use in commercial
18 timber harvesting operations, and the parts thereof, that is
19 purchased for use by a qualified person to be used primarily in
20 harvesting timber.

21 (b) The State Board of Equalization may adopt emergency
22 regulations to specify equipment and machinery exempted by this
23 section, and may revise those regulations from time to time.

24 (c) For purposes of this section, “qualified person” means any
25 person engaged in commercial timber harvesting.

26 (d) (1) Notwithstanding any provision of the Bradley-Burns
27 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
28 with Section 7200)) or the Transactions and Use Tax Law (Part
29 1.6 (commencing with Section 7251)), the exemption established
30 by this section does not apply with respect to any tax levied by a
31 county, city, or district pursuant to, or in accordance with, either
32 of those laws.

33 (2) Notwithstanding subdivision (a), the exemption established
34 by this section does not apply with respect to any tax levied
35 pursuant to Section 6051.2 and 6201.2, or pursuant to Section 35
36 of Article XIII of the California Constitution.

37 (e) The exemption provided by this section shall be effective
38 starting September 1, 2001.

1 (f) *This section shall remain in effect only until January 1, 2013,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2013, deletes or extends that date.*

4 SEC. 9. *Section 6357.1 of the Revenue and Taxation Code is*
5 *amended to read:*

6 6357.1. (a) There are exempted from the taxes imposed by
7 this part, the gross receipts from the sale in this state of, and the
8 storage, use, or other consumption in this state of, diesel fuel used
9 in farming activities and food processing. This section shall be
10 implemented as soon as possible, but in no case later than
11 September 1, 2001.

12 (b) For purposes of this section, “farming activities” has the
13 same meaning as “farming business” as set forth in Section 263A
14 of the Internal Revenue Code. “Farming activities” also includes
15 the transportation and delivery of farm products to the marketplace.

16 (c) The exemption established by this section does not apply
17 with respect to either of the following:

18 (1) A tax imposed under the Bradley-Burns Uniform Local Sales
19 and Use Tax Law (Part 1.5 (commencing with Section 7200)) or
20 in accordance with the Transactions and Use Tax Law (Part 1.6
21 (commencing with Section 7251)).

22 (2) A tax imposed under Section 6051.2 or 6201.2, or under
23 Section 35 of Article XIII of the California Constitution.

24 (d) *This section shall remain in effect only until January 1, 2013,*
25 *and as of that date is repealed, unless a later enacted statute, that*
26 *is enacted before January 1, 2013, deletes or extends that date.*

27 SEC. 10. *Section 6357.7 of the Revenue and Taxation Code is*
28 *amended to read:*

29 6357.7. (a) On and after July 1, 2010, there are exempted from
30 the taxes imposed by this part, the gross receipts from the sale in
31 this state of, and the storage, use, or other consumption in this state
32 of, motor vehicle fuel, as defined in Section 7326.

33 (b) (1) Notwithstanding any provision of the Bradley-Burns
34 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
35 with Section 7200)) or the Transactions and Use Tax Law (Part
36 1.6 (commencing with Section 7251)), the exemption established
37 by this section shall not apply with respect to any tax levied by a
38 county, city, or district pursuant to, or in accordance with, either
39 of those laws.

1 (2) The exemption established by this section shall not apply
2 with respect to any tax levied pursuant to Section 6051.2, 6051.5,
3 6201.2, or 6201.5, or pursuant to Section 35 of Article XIII of the
4 California Constitution.

5 (c) On and after July 1, 2010, the State Board of Equalization
6 and the Department of Finance shall recognize that the state no
7 longer receives state sales and use tax revenues from the sale of,
8 and the storage, use, or other consumption of, motor vehicle fuel
9 for purposes of any estimates required to be performed under
10 paragraphs (1) and (2) of subdivision (a) of Section 7102, and
11 Section 7104.2.

12 (d) *This section shall remain in effect only until January 1, 2013,*
13 *and as of that date is repealed, unless a later enacted statute, that*
14 *is enacted before January 1, 2013, deletes or extends that date.*

15 *SEC. 11. Section 6358.5 of the Revenue and Taxation Code is*
16 *amended to read:*

17 6358.5. (a) (1) There are exempted from the taxes imposed
18 by this part, the gross receipts from the sale in this state of, and
19 the storage, use, or other consumption in this state of, any racehorse
20 breeding stock.

21 (2) For purposes of this section “racehorse breeding stock”
22 means a horse that is capable of reproduction and for which the
23 purchaser states that it is the purchaser’s sole intent to use the horse
24 for breeding purposes.

25 (b) (1) Notwithstanding any provision of the Bradley-Burns
26 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
27 with Section 7200)) or the Transactions and Use Tax Law (Part
28 1.6 (commencing with Section 7251)), the exemption established
29 by this section does not apply with respect to any tax levied by a
30 county, city, or district pursuant to, or in accordance with, either
31 of those laws.

32 (2) The exemption established by this section does not apply
33 with respect to any tax levied pursuant to either Section 6051.2 or
34 6201.2, or pursuant to Section 35 of Article XIII of the California
35 Constitution.

36 (c) The exemption provided by this section shall be effective
37 starting September 1, 2001.

38 (d) *This section shall remain in effect only until January 1, 2013,*
39 *and as of that date is repealed, unless a later enacted statute, that*
40 *is enacted before January 1, 2013, deletes or extends that date.*

1 *SEC. 12. Section 6378 of the Revenue and Taxation Code is*
2 *amended to read:*

3 6378. (a) There are exempted from the taxes imposed by this
4 part the gross receipts from the sale of, and the storage, use, or
5 other consumption in this state of, any of the following:

6 (1) Tangible personal property purchased for use by a qualified
7 person to be used primarily in teleproduction or other
8 postproduction services.

9 (2) Tangible personal property purchased for use by a qualified
10 person to be used primarily to maintain, repair, measure, or test
11 any property described in paragraph (1).

12 (b) This exemption shall not apply to any tangible personal
13 property that is used primarily in administration, general
14 management, or marketing.

15 (c) For purposes of this section:

16 (1) “Primarily” means tangible personal property used 50 percent
17 or more of the time in an activity described in subdivision (a).

18 (2) “Qualified person” means any person that is primarily
19 engaged in teleproduction or other postproduction activities that
20 are described in Code 512191 of the North American Industry
21 Classification System Manual published by the United States Office
22 of Management and Budget, 1997 edition.

23 (3) “Teleproduction or other postproduction services” means
24 services for film or video that include editing, film and video
25 transfers, transcoding, dubbing, subtitling, credits, close captioning,
26 audio production, special effects (visual or sound), graphics, or
27 animation.

28 (4) “Tangible personal property” includes, but is not limited to,
29 all of the following:

30 (A) Machinery and equipment, including component parts.

31 (B) All equipment or devices used or required to operate,
32 control, regulate, or maintain the machinery, including, without
33 limitation, computers, data processing equipment, and computer
34 software, together with all repair and replacement parts with a
35 useful life of one or more years, whether purchased separately or
36 in conjunction with a complete machine and regardless of whether
37 the machine or component parts are assembled by the taxpayers
38 or another party.

39 (5) “Tangible personal property” does not include furniture,
40 inventory, or equipment used to store products.

1 (d) No exemption shall be allowed under this section unless the
2 purchaser furnishes the retailer with an exemption certificate,
3 completed in accordance with any instructions or regulations as
4 the board may prescribe, and the retailer subsequently furnishes
5 the board with a copy of the exemption certificate. The exemption
6 certificate shall contain the sales price of the machinery and
7 equipment that is exempt pursuant to subdivision (a).

8 (e) (1) Notwithstanding any provision of the Bradley-Burns
9 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
10 with Section 7200)) or the Transactions and Use Tax Law (Part
11 1.6 (commencing with Section 7251)), the exemption established
12 by the section shall not apply with respect to any tax levied by a
13 county, city, or district pursuant to, or in accordance with, either
14 of these laws.

15 (2) The exemption established by this section shall not apply
16 with respect to any tax levied pursuant to Sections 6051.2 and
17 6201.2, or pursuant to Section 35 of Article XIII of the California
18 Constitution.

19 (3) The exemption established by this section shall not apply
20 to any sale or use of property that, within one year from the date
21 of purchase, is either removed from California or converted from
22 an exempt use under subdivision (a) to some other use not
23 qualifying for the exemption.

24 (f) If a purchaser certifies in writing to the seller that the property
25 purchased without payment of the tax will be used in a manner
26 entitling the seller to regard the gross receipts from the sale as
27 exempt from the sales tax, and within one year from the date of
28 purchase, the purchaser (1) removes that property outside
29 California, (2) converts that property for use in a manner not
30 qualifying for the exemption, or (3) uses that property in a manner
31 not qualifying for the exemption, the purchaser shall be liable for
32 payment of sales tax, with applicable interest, as if the purchaser
33 were a retailer making a retail sale of the property at the time the
34 property is so removed, converted, or used, and the sales price of
35 the property to the purchaser shall be deemed the gross receipts
36 from that retail sale.

37 (g) *This section shall remain in effect only until January 1, 2013,*
38 *and as of that date is repealed, unless a later enacted statute, that*
39 *is enacted before January 1, 2013, deletes or extends that date.*

1 *SEC. 13. Chapter 9 (commencing with Section 7101) is added*
2 *to Part 1 of Division 2 of the Revenue and Taxation Code, to read:*

3
4 *CHAPTER 9. DISPOSITION OF PROCEEDS*
5

6 7101. All fees, taxes, interest, and penalties imposed and all
7 amounts of tax required to be paid to the state under this part, and
8 restitution orders or any other amounts otherwise authorized by
9 law to be collected by the board, or any other amounts imposed
10 by a court of competent jurisdiction to be paid to the board shall,
11 except as provided in Section 6452.1, be paid to the board in the
12 form of remittances payable to the State Board of Equalization of
13 the State of California. The board shall transmit the payments to
14 the Treasurer to be deposited in the State Treasury to the credit
15 of the Local Public Safety Fund.

16 *SEC. 14. Section 7108 is added to the Revenue and Taxation*
17 *Code, to read:*

18 7108. This chapter shall remain in effect only until January 1,
19 2013, and as of that date is repealed, unless a later enacted statute,
20 that is enacted before January 1, 2013, deletes or extends that
21 date.

22 *SEC. 15. Chapter 3 (commencing with Section 7227) is added*
23 *to Part 1.5 of Division 2 of the Revenue and Taxation Code, to*
24 *read:*

25
26 *CHAPTER 3. REPEAL*
27

28 7227. This part shall remain in effect only until January 1,
29 2013, and as of that date is repealed, unless a later enacted statute,
30 that is enacted before January 1, 2013, deletes or extends that
31 date.

32 *SEC. 16. Chapter 3 (commencing with Section 7239) is added*
33 *to Part 1.55 of Division 2 of the Revenue and Taxation Code, to*
34 *read:*

35
36 *CHAPTER 3. REPEAL*
37

38 7239. This part shall remain in effect only until January 1,
39 2013, and as of that date is repealed, unless a later enacted statute,

1 *that is enacted before January 1, 2013, deletes or extends that*
2 *date.*

3 *SEC. 17. Chapter 5 (commencing with Section 7279.8) is added*
4 *to Part 1.6 of Division 2 of the Revenue and Taxation Code, to*
5 *read:*

6
7 *CHAPTER 5. REPEAL*
8

9 *7279.8. This part shall remain in effect only until January 1,*
10 *2013, and as of that date is repealed, unless a later enacted statute,*
11 *that is enacted before January 1, 2013, deletes or extends that*
12 *date.*

13 *SEC. 18. Chapter 3.8 (commencing with Section 7293) is added*
14 *to Part 1.7 of Division 2 of the Revenue and Taxation Code, to*
15 *read:*

16
17 *CHAPTER 3.8. REPEAL*
18

19 *7293. This part shall remain in effect only until January 1,*
20 *2013, and as of that date is repealed, unless a later enacted statute,*
21 *that is enacted before January 1, 2013, deletes or extends that*
22 *date.*

23 *SEC. 19. Chapter 13 (commencing with Section 8527) is added*
24 *to Part 2 of Division 2 of the Revenue and Taxation Code, to read:*

25
26 *CHAPTER 13. REPEAL*
27

28 *8527. This part shall remain in effect only until January 1,*
29 *2013, and as of that date is repealed, unless a later enacted statute,*
30 *that is enacted before January 1, 2013, deletes or extends that*
31 *date.*

32 *SEC. 20. Chapter 10 (commencing with Section 9356) is added*
33 *to Part 3 of Division 2 of the Revenue and Taxation Code, to read:*

34
35 *CHAPTER 10. REPEAL*
36

37 *9356. This part shall remain in effect only until January 1,*
38 *2013, and as of that date is repealed, unless a later enacted statute,*
39 *that is enacted before January 1, 2013, deletes or extends that*
40 *date.*

1 *SEC. 21. Section 9508 is added to the Revenue and Taxation*
2 *Code, to read:*

3 *9508. This part shall remain in effect only until January 1,*
4 *2013, and as of that date is repealed, unless a later enacted statute,*
5 *that is enacted before January 1, 2013, deletes or extends that*
6 *date.*

7 *SEC. 22. Chapter 8 (commencing with Section 11703) is added*
8 *to Part 6 of Division 2 of the Revenue and Taxation Code, to read:*

9
10 *CHAPTER 8. REPEAL*

11
12 *11703. This part shall remain in effect only until January 1,*
13 *2013, and as of that date is repealed, unless a later enacted statute,*
14 *that is enacted before January 1, 2013, deletes or extends that*
15 *date.*

16 *SEC. 23. Chapter 5 (commencing with Section 11936) is added*
17 *to Part 6.7 of Division 2 of the Revenue and Taxation Code, to*
18 *read:*

19
20 *CHAPTER 5. REPEAL*

21
22 *11936. This part shall remain in effect only until January 1,*
23 *2013, and as of that date is repealed, unless a later enacted statute,*
24 *that is enacted before January 1, 2013, deletes or extends that*
25 *date.*

26 *SEC. 24. Chapter 9 (commencing with Section 16952) is added*
27 *to Part 9.5 of Division 2 of the Revenue and Taxation Code, to*
28 *read:*

29
30 *CHAPTER 9. REPEAL*

31
32 *16952. This part shall remain in effect only until January 1,*
33 *2013, and as of that date is repealed, unless a later enacted statute,*
34 *that is enacted before January 1, 2013, deletes or extends that*
35 *date.*

36 *SEC. 25. Section 17039.1 of the Revenue and Taxation Code*
37 *is repealed.*

38 ~~17039.1. Notwithstanding Section 17039 or any other provision~~
39 ~~in this part to the contrary, the credit allowed by Section 17053.30~~
40 ~~(relating to natural heritage) may reduce the tax imposed under~~

~~Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, but only after allowance of the credit allowed by Section 17063.~~

SEC. 26. Section 17039.3 is added to the Revenue and Taxation Code, to read:

17039.3. Notwithstanding this part or Part 10.2 (commencing with Section 18401), for each taxable year beginning on or after January 1, 2014, any credit otherwise allowable under Chapter 2 (commencing with Section 17041) or Section 17063, including the carryover of any credit under Chapter 2 (commencing with Section 17041) from a prior taxable year, any former provision of that chapter, or Section 17063, shall not be allowed against the “net tax,” as defined in Section 17039, except the credits allowed under Section 17053.5 and Chapter 12 (commencing with Section 18001).

SEC. 27. Section 17041.3 is added to the Revenue and Taxation Code, to read:

17041.3. (a) (1) For each taxable year beginning on or after January 1, 2014, Section 17041 is modified to provide that the percentages and income tax brackets specified in paragraph (1) of subdivision (a) shall be the percentages and income tax brackets in paragraph (2) in lieu of each of the percentages and income tax brackets contained therein.

(2) If the taxable income is:	The tax is:
Over \$1	5.8% of the taxable income

(b) (1) For each taxable year beginning on or after January 1, 2014, Section 17041 is modified to provide that the percentages and income tax brackets specified in paragraph (1) of subdivision (c) shall be the percentages and income tax brackets in paragraph (2) in lieu of each of the percentages and income tax brackets contained therein.

(2) If the taxable income is:	The tax is:
Over \$1	5.8% of the taxable income

(c) The income tax brackets in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) shall not be recomputed in accordance with subdivision (h) of Section 17041.

1 SEC. 28. *Section 17064 is added to the Revenue and Taxation*
2 *Code, to read:*

3 17064. *This chapter shall not apply to taxable years beginning*
4 *on or after January 1, 2013, and shall remain in effect only until*
5 *January 1, 2014, and as of that date is repealed.*

6 SEC. 29. *Section 17073 of the Revenue and Taxation Code is*
7 *amended to read:*

8 17073. (a) *Section 63 of the Internal Revenue Code, relating*
9 *to taxable income defined, shall apply, except as otherwise*
10 *provided.*

11 ~~(b) The deduction allowed by Section 17208.1, relating to~~
12 ~~interest on loans or financed indebtedness obtained from a publicly~~
13 ~~owned utility for the purchase and installation of energy efficient~~
14 ~~products or equipment, may not be treated as a miscellaneous~~
15 ~~itemized deduction under Section 67(a) of the Internal Revenue~~
16 ~~Code, relating to the 2-percent floor on miscellaneous deductions.~~

17 ~~(e) For individuals who do not itemize deductions, the standard~~
18 ~~deduction computed in accordance with Section 17073.5 shall be~~
19 ~~allowed as a deduction in computing taxable income.~~

20 (b) *For each taxable year beginning on or after January 1,*
21 *2013, Section 63(a) of the Internal Revenue Code is modified to*
22 *provide that the term “taxable income” means adjusted gross*
23 *income (as defined in Section 17072), minus either “itemized*
24 *deductions” (as defined in subdivision (c)) or the standard*
25 *deduction computed in accordance with Section 17073.5.*

26 (c) *For each taxable year beginning on or after January 1, 2013,*
27 *Section 63(d) of the Internal Revenue Code, relating to itemized*
28 *deductions, is modified to provide that the term “itemized*
29 *deductions” means only the deductions for each of the following:*

30 (1) *The deduction for qualified residence interest under Section*
31 *163 of the Internal Revenue Code.*

32 (2) *The deduction under Section 170 of the Internal Revenue*
33 *Code, relating to charitable, etc., contributions and gifts.*

34 (3) *The deduction for interest on education loans under Section*
35 *221 of the Internal Revenue Code.*

36 (4) *The deduction for interest with respect to insurance contracts*
37 *under Section 264(a)(4) of the Internal Revenue Code.*

38 (5) *The deduction for interest with respect to tax-exempt income*
39 *under Section 265(a)(2) and (6) of the Internal Revenue Code.*

1 *SEC. 30. Section 17087.5 of the Revenue and Taxation Code*
2 *is repealed.*

3 ~~17087.5. Subchapter S of Chapter 1 of Subtitle A of the Internal~~
4 ~~Revenue Code, relating to tax treatment of “S corporations” and~~
5 ~~their shareholders, shall apply, except as otherwise provided under~~
6 ~~this part or Part 11 (commencing with Section 23001).~~

7 *SEC. 31. Section 17552 of the Revenue and Taxation Code is*
8 *amended to read:*

9 17552. (a) Notwithstanding Section 17565, a return for a period
10 of less than 12 months shall also be made when the Franchise Tax
11 Board terminates the taxpayer’s taxable year under Section 19082
12 (relating to tax in jeopardy).

13 ~~(b) Section 443(c) of the Internal Revenue Code, relating to~~
14 ~~adjustment in deduction for personal exemption, is modified by~~
15 ~~substituting the phrase “the credit allowed under Section 17054”~~
16 ~~for the phrase “the exemptions allowed as a deduction under section~~
17 ~~151 (and any deduction in lieu thereof).”~~

18 *SEC. 32. Article 2.5 (commencing with Section 17100) is added*
19 *to Chapter 3 of Part 10 of Division 2 of the Revenue and Taxation*
20 *Code, to read:*

21
22 *Article 2.5. Tax Treatment of “S” Corporations and their*
23 *Shareholders*
24

25 17100. *Subchapter S of Chapter 1 of Subtitle A of the Internal*
26 *Revenue Code, relating to the tax treatment of “S” corporations*
27 *and their shareholders, shall apply, except as otherwise provided.*

28 17101. (a) *A corporation that has in effect for federal income*
29 *tax purposes a valid election under Section 1362(a) of the Internal*
30 *Revenue Code shall be an “S” corporation for purposes of this*
31 *part and Part 10.2 (commencing with Section 18401).*

32 (b) *A corporation that is an “S” corporation for federal income*
33 *tax purposes shall be an “S” corporation for purposes of this part,*
34 *Part 10.2 (commencing with Section 18401), and its shareholders*
35 *shall be shareholders of an “S” corporation without regard to*
36 *whether the corporation is qualified to do business or is*
37 *incorporated in this state.*

38 (c) (1) *A termination of a federal election pursuant to Section*
39 *1362(d) of the Internal Revenue Code that is not an inadvertent*
40 *termination pursuant to Section 1362(f) of the Internal Revenue*

1 Code shall simultaneously terminate the “S” corporation election
2 for purposes of this part and Part 10.2 (commencing with Section
3 18401).

4 (2) A federal termination by revocation shall be effective for
5 purposes of this part and shall be reported to the Franchise Tax
6 Board in the form and manner prescribed by the Franchise Tax
7 Board no later than the last date allowed for filing federal
8 termination for that year under Section 1362(d) of the Internal
9 Revenue Code.

10 (d) Section 1362(d)(3) of the Internal Revenue Code, relating
11 to circumstances where passive investment income exceeds 25
12 percent of gross receipts for three consecutive taxable years and
13 the corporation has accumulated earnings and profits, shall not
14 apply unless the “S” election is terminated for federal income tax
15 purposes.

16 (e) (1) The provisions of Section 1362(b)(5) of the Internal
17 Revenue Code, relating to authority to treat late elections, etc., as
18 timely, shall apply only for taxable years beginning on or after
19 January 1, 1997, with respect to elections under Section 1362(a)
20 of the Internal Revenue Code for taxable years beginning on or
21 after January 1, 1997.

22 (2) Notwithstanding paragraph (1), if for any taxable year
23 beginning on or after January 1, 2003, a corporation fails to
24 qualify as an “S” corporation for federal income tax purposes
25 solely because the federal Form 2553 (Election by a Small Business
26 Corporation) was not filed timely, the corporation shall be treated
27 for purposes of this part as an “S” corporation for the taxable
28 year the “S” corporation election should have been made, and for
29 each subsequent year until terminated, if the corporation and its
30 shareholders have filed with the Internal Revenue Service a federal
31 Form 2553 requesting automatic relief with respect to the late “S”
32 corporation election, in full compliance with the federal Revenue
33 Procedure 1997-48, I.R.B. 1997-43, and have received notification
34 of the acceptance of the untimely filed “S” corporation election
35 from the Internal Revenue Service. A copy of the notification shall
36 be provided to the Franchise Tax Board upon request.

37 (f) The provisions of Section 1362(f) of the Internal Revenue
38 Code, relating to inadvertent invalid elections or terminations,
39 shall apply only for taxable years beginning on or after January
40 1, 1997, with respect to elections under Section 1362(a) of the

1 *Internal Revenue Code for taxable years beginning on or after*
2 *January 1, 1997.*

3 *17102. (a) For purposes of this part, Part 10.2 (commencing*
4 *with Section 18401), and Part 12 (commencing with Section*
5 *27001):*

6 *(1) (A) Section 1361(b)(3)(A)(ii) of the Internal Revenue Code*
7 *shall not apply and, in lieu thereof, subparagraph (B) shall apply*
8 *and all references to Section 1361(b)(3)(A)(ii) of the Internal*
9 *Revenue Code shall be treated as a reference to subparagraph*
10 *(B).*

11 *(B) All activities, assets, liabilities, receipts, purchases, and*
12 *items of income, deduction, and credit of a qualified Subchapter*
13 *S subsidiary shall be treated as activities (including activities for*
14 *purposes of Part 12), assets, liabilities, receipts, purchases, and*
15 *those items, as the case may be, of the “S” corporation.*

16 *(2) Section 1361(b)(3)(B) of the Internal Revenue Code is*
17 *modified to include the following requirements in addition to the*
18 *requirements contained therein:*

19 *(A) The “S” corporation has in effect a valid election to treat*
20 *the corporation as a qualified Subchapter S subsidiary for federal*
21 *income tax purposes.*

22 *(B) An election made by the “S” corporation under Section*
23 *1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the*
24 *corporation as a qualified Subchapter S subsidiary for federal*
25 *income tax purposes shall be treated for purposes of this part as*
26 *an election made by the “S” corporation under this subdivision*
27 *and a separate election under paragraph (3) of subdivision (e) of*
28 *Section 17024.5 shall not be allowed.*

29 *(C) No election under this subdivision shall be allowed unless*
30 *the “S” corporation has made the election under Section*
31 *1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the*
32 *corporation as a qualified Subchapter S subsidiary for federal*
33 *income tax purposes.*

34 *(b) Section 1361(c)(6) of the Internal Revenue Code, relating*
35 *to certain exempt organizations permitted as shareholders, is*
36 *modified by substituting a reference to Section 17631 or Section*
37 *27701d in lieu of the reference to Section 501(c)(3) of the Internal*
38 *Revenue Code and by substituting a reference to Section 17631*
39 *or Section 27701 in lieu of the reference to Section 501(a) of the*
40 *Internal Revenue Code.*

1 (c) Section 1361(e)(1)(B)(ii) of the Internal Revenue Code,
2 relating to certain trusts not eligible, is modified by substituting
3 “under this part” in lieu of “under this subtitle.”

4 (d) Section 1361(e)(3) of the Internal Revenue Code, relating
5 to election, is modified to include the following provisions:

6 (1) An election made by the trustee under Section 1361(e) of
7 the Internal Revenue Code to be an electing small business trust
8 for federal income tax purposes shall be treated for purposes of
9 this part as an election made by the trustee under this subdivision
10 and a separate election under paragraph (3) of subdivision (e) of
11 Section 17024.5 shall not be allowed. Any election made shall
12 apply to the taxable year of the trust for which that election is
13 made and to all subsequent taxable years of that trust, unless
14 revoked with the consent of the Franchise Tax Board.

15 (2) No election under this subdivision shall be allowed unless
16 the trustee has made the election under Section 1361(e) of the
17 Internal Revenue Code to be an electing small business trust for
18 federal income tax purposes.

19 17103. For purposes of subdivision (b) of Section 17276,
20 relating to limitations on loss carryovers, losses passed through
21 to shareholders of an “S” corporation, to the extent otherwise
22 allowable without application of that subdivision, shall be fully
23 included in the net operating loss of that shareholder and then
24 that subdivision shall be applied to the entire net operating loss.

25 17104. (a) Section 1366(a)(1) of the Internal Revenue Code,
26 relating to determination of shareholder’s tax liability, is modified
27 to apply to the final taxable year of a trust or estate that terminates
28 before the end of the corporation’s taxable year.

29 (b) Section 1366(d)(1)(A) of the Internal Revenue Code, relating
30 to losses and deductions that cannot exceed shareholder’s basis
31 in stock and debt, is modified to additionally provide that the
32 adjusted basis of a shareholder’s stock in the “S” corporation is
33 to be decreased by distributions by the corporation that were not
34 includable in the income of the shareholder by reason of Section
35 1368 of the Internal Revenue Code.

36 (c) Section 1366(d)(3) of the Internal Revenue Code, relating
37 to carryover of disallowed losses and deductions to
38 post-termination transition period, is modified to provide that to
39 the extent that any increase in adjusted basis described in Section
40 1366(d)(3)(B) of the Internal Revenue Code would have increased

1 *the shareholder's amount at risk under Section 465 if the increase*
2 *had occurred on the day preceding the commencement of the*
3 *post-termination transition period, rules similar to the rules*
4 *described in Section 1366(d)(3)(A) to (C), inclusive, of the Internal*
5 *Revenue Code shall apply to any losses disallowed by reason of*
6 *Section 465(a) of the Internal Revenue Code.*

7 *17105. (a) Section 1366(f) of the Internal Revenue Code,*
8 *relating to special rules, shall be modified as follows:*

9 *(1) The amount of tax used to compute the loss allowed by*
10 *Section 1366(f)(2) of the Internal Revenue Code shall be the*
11 *amount of tax imposed on built-in gains under former Part 11*
12 *(commencing with Section 23001).*

13 *(2) The amount of tax used to compute the reduction allowed*
14 *by Section 1366(f)(3) of the Internal Revenue Code shall be the*
15 *amount of tax imposed on excess net passive income under former*
16 *Part 11 (commencing with Section 23001).*

17 *17106. Section 1367(b)(4) of the Internal Revenue Code,*
18 *relating to adjustments in case of inherited stock, shall apply for*
19 *decedents dying after December 31, 1996.*

20 *17107. (a) Section 1371(a) of the Internal Revenue Code,*
21 *relating to application of Subchapter C rules, is modified to provide*
22 *that, notwithstanding subdivisions (a) and (e) of Section 17024.5,*
23 *any election by an "S" corporation or its shareholders under*
24 *Section 338 of the Internal Revenue Code, relating to certain stock*
25 *purchases treated as asset acquisitions, for federal purposes shall*
26 *be treated as an election for purposes of this part and a separate*
27 *election under paragraph (3) of subdivision (e) of Section 17024.5*
28 *shall not be allowed.*

29 *(b) No election under Section 338 of the Internal Revenue Code,*
30 *relating to certain stock purchases treated as asset acquisitions,*
31 *shall be allowed for state purposes unless the "S" corporation or*
32 *its shareholders made a valid election for federal purposes under*
33 *Section 338 of the Internal Revenue Code.*

34 *(c) Section 1371(d) of the Internal Revenue Code shall not apply.*

35 *17108. Section 1372 of the Internal Revenue Code shall be*
36 *modified so that references to partnership treatment shall be to*
37 *Internal Revenue Code partnership provisions, as modified by this*
38 *part.*

39 *17109. Sections 1373 and 1379 of the Internal Revenue Code*
40 *shall not apply.*

1 17110. Section 1374 of the Internal Revenue Code, relating to
2 tax imposed on certain built-in gains, shall not apply.

3 17111. Section 1375 of the Internal Revenue Code, relating to
4 tax imposed on passive investment income, shall not apply.

5 17112. Section 1377(b)(2) of the Internal Revenue Code,
6 relating to determination defined, is modified to include, in addition
7 to the items specified therein, the following:

8 (a) A decision by the State Board of Equalization that has
9 become final.

10 (b) A closing agreement made under Article 6 (commencing
11 with Section 19441) of Chapter 6 of Part 10.2.

12 (c) A final disposition by the Franchise Tax Board of a claim
13 for refund.

14 17113. Any reference to Chapter 4.5 (commencing with Section
15 23800) of Part 11 or any provision thereof shall also be a reference
16 to this article or a provision of this article which is substantially
17 the same as the provision referenced in Chapter 4.5 (commencing
18 with Section 23800) of Part 11.

19 17114. This article shall be operative for taxable years
20 beginning on or after January 1, 2013.

21 SEC. 33. Section 17731.5 of the Revenue and Taxation Code
22 is amended to read:

23 17731.5. ~~(a)~~ Section 641(c)(2)(A) of the Internal Revenue
24 Code is modified to read: "The amount of the tax imposed by
25 subdivision (e) of Section 17041 shall be determined by using the
26 highest rate of tax applicable to an individual under subdivision
27 (a) of Section 17041."

28 ~~(b) Section 641(e)(2)(B) of the Internal Revenue Code is~~
29 ~~modified to read: "The credit allowed under subdivision (b) of~~
30 ~~Section 17733 shall be zero."~~

31 SEC. 34. Section 17733 of the Revenue and Taxation Code is
32 repealed.

33 ~~17733. (a) An estate shall be allowed a credit of ten dollars~~
34 ~~(\$10) against the tax imposed under Section 17041, less any~~
35 ~~amounts imposed under paragraph (1) of subdivision (d) or~~
36 ~~paragraph (1) of subdivision (e), or both, of Section 17560.~~

37 ~~(b) (1) Except as provided in paragraph (2), a trust shall be~~
38 ~~allowed a credit of one dollar (\$1) against the tax imposed under~~
39 ~~Section 17041, less any amounts imposed under paragraph (1) of~~

1 ~~subdivision (d) or paragraph (1) of subdivision (e), or both, of~~
2 ~~Section 17560.~~

3 ~~(2) (A) A disability trust, as defined in Section 642(b)(2)(C)~~
4 ~~of the Internal Revenue Code, shall be allowed a credit in an~~
5 ~~amount equal to the personal exemption credit authorized for a~~
6 ~~single individual pursuant to subdivision (a) of Section 17054.~~

7 ~~(B) The credit authorized by subparagraph (A) shall be subject~~
8 ~~to the credit reduction provisions of Section 17054.1. For purposes~~
9 ~~of making the adjustments required by Section 17054.1, the~~
10 ~~adjusted gross income of the disability trust shall be computed in~~
11 ~~accordance with Section 67(e) of the Internal Revenue Code,~~
12 ~~relating to determination of adjusted gross income in case of estates~~
13 ~~and trusts.~~

14 ~~(C) This paragraph applies to taxable years beginning on or~~
15 ~~after January 1, 2004.~~

16 ~~(e) The credits allowed by this section shall be in lieu of the~~
17 ~~credits allowed under Section 17054 (relating to credit for personal~~
18 ~~exemption).~~

19 *SEC. 35. Section 17938 is added to the Revenue and Taxation*
20 *Code, to read:*

21 *17938. This chapter shall not apply to taxable years beginning*
22 *on or after January 1, 2013, and shall remain in effect only until*
23 *January 1, 2014, and as of that date is repealed.*

24 *SEC. 36. Section 17947.5 is added to the Revenue and Taxation*
25 *Code, to read:*

26 *17947.5. This chapter shall not apply to taxable years*
27 *beginning on or after January 1, 2013, and shall remain in effect*
28 *only until January 1, 2014, and as of that date is repealed.*

29 *SEC. 37. Section 17948.5 is added to the Revenue and Taxation*
30 *Code, to read:*

31 *17948.5. This chapter shall not apply to taxable years*
32 *beginning on or after January 1, 2013, and shall remain in effect*
33 *only until January 1, 2014, and as of that date is repealed.*

34 *SEC. 38. Section 18401 of the Revenue and Taxation Code is*
35 *amended to read:*

36 *18401. Each provision of this part shall apply to Part 10*
37 *(commencing with Section 17001) and, Part 11 (commencing with*
38 *Section 23001), and Part 12 (commencing with Section 27001),*
39 *unless otherwise provided.*

1 *SEC. 39. Section 18402 of the Revenue and Taxation Code is*
2 *amended to read:*

3 18402. (a) Except where the context otherwise requires, the
4 general provisions and definitions provided in Chapter 1
5 (commencing with Section 17001) of Part 10 ~~and in~~, Chapter 1
6 (commencing with Section 23001) of Part 11, *and Chapter 1*
7 *(commencing with Section 27001) of Part 12* shall apply to this
8 part.

9 (b) For purposes of this part, “person” includes an individual,
10 fiduciary, partnership, limited liability company, corporation, or
11 organization exempt from taxation under Section 23701.

12 (c) (1) Whenever provisions of this part are applied in
13 connection with Part 10 (commencing with Section 17001), the
14 terms “taxpayer,” “corporation” and “taxable year” have the same
15 meaning as defined in Chapter 1 (commencing with Section 17001)
16 of Part 10.

17 (2) Whenever provisions of this part are applied in connection
18 with Part 11 (commencing with Section 23001), the terms
19 “taxpayer,” “corporation,” “income year,” and “taxable year” have
20 the same meaning as defined in Article 2 (commencing with
21 Section 23030) of Chapter 1 of Part 11.

22 (3) *Whenever provisions of this part are applied in connection*
23 *with Part 12 (commencing with Section 27001), the terms*
24 *“taxpayer,” “business entity,” and “taxable year” shall have the*
25 *same meaning as defined in Chapter 1 (commencing with Section*
26 *27001) of part 12.*

27 *SEC. 40. Section 18403 of the Revenue and Taxation Code is*
28 *amended to read:*

29 18403. For purposes of this part, any return, declaration, report,
30 statement, or other document required to be made or filed under
31 Part 10 (commencing with Section 17001) ~~or~~, Part 11 (commencing
32 with Section 23001), *or Part 12 (commencing with Section 27001)*
33 shall be deemed to have been required to be made or filed under
34 this part.

35 *SEC. 41. Section 18405 of the Revenue and Taxation Code is*
36 *amended to read:*

37 18405. (a) In the case of a new statutory provision in Part 7.5
38 (commencing with Section 13201), Part 10 (commencing with
39 Section 17001), Part 10.2 (commencing with Section 18401), ~~or~~
40 Part 11 (commencing with Section 23001), *or Part 12 (commencing*

with Section 27001), or the addition of a new part, the Franchise Tax Board itself is authorized to grant relief as set forth in subdivision (b) from the requirements of the new statutory provision in a manner as provided in subdivision (c).

(b) The relief provided in subdivision (a) may be granted only for the first taxable year for which the new statutory provision is operative and only when substantial unintentional noncompliance with the new provision has occurred by a class of affected taxpayers. The relief is limited to waiving penalties or perfecting elections and may be granted only to taxpayers who timely paid taxes and other required amounts shown on the return consistent with the election and who timely filed their return (with regard to extension).

(c) The relief granted in this section shall, upon the recommendation of the Executive Officer of the Franchise Tax Board, be made by resolution of the Franchise Tax Board that sets forth the conditions, time, and manner as the Franchise Tax Board determines are necessary. The resolution shall be adopted only by an affirmative vote of each of the three members of the Franchise Tax Board.

(d) For purposes of this section:

(1) “New statutory provision” means a complete, newly established tax program, tax credit, exemption, deduction, exclusion, penalty, or reporting or payment requirement and does not mean amendments made to existing tax provisions that make minor modifications or technical changes.

(2) “Perfecting elections” includes correcting omissions or errors only when substantial evidence is present with the filed return that the taxpayer intended to make the election and does not include making an election where one was not previously attempted to be made.

(3) “Substantial unintentional noncompliance,” for purposes of Part 11 (commencing with Section 23001), includes any case in which the taxpayer filed a water’s-edge contract with a timely filed original return and timely paid all taxes and other required amounts shown on the return consistent with the water’s-edge election, but where the taxpayer’s election is or might be invalidated by reason of the act or omission of an affiliated corporation that is not the parent or a subsidiary of the taxpayer. In that case, notwithstanding anything to the contrary in this section, relief shall be deemed

1 granted to validate the taxpayer's water's-edge election,
2 conditioned only upon an agreement by the affiliated corporation
3 to either (A) file a water's-edge contract and pay all taxes and
4 other required amounts consistent with that election, or (B) waive
5 any right, with respect to any taxable year for which the corporation
6 did not make a water's-edge election on its own timely filed return,
7 to determine its income derived from or attributable to sources
8 within this state pursuant to that election, whichever measure
9 produces the greater amount of tax.

10 (e) This section shall apply to any Franchise Tax Board
11 resolution adopted after the effective date of this section with
12 respect to any taxable year that is subject to an open statute of
13 limitations on the date of the resolution.

14 *SEC. 42. Section 18407 of the Revenue and Taxation Code, as*
15 *amended by Section 326 of Chapter 183 of the Statutes of 2004,*
16 *is repealed.*

17 ~~18407. Section 6011 of the Internal Revenue Code, relating to~~
18 ~~general requirement of return, statement, or list, shall apply, except~~
19 ~~as otherwise provided.~~

20 (a) ~~Section 6011(a) of the Internal Revenue Code, relating to~~
21 ~~general rule, is modified as follows:~~

22 (1) ~~The phrase "any person liable for any tax imposed by Part~~
23 ~~10 (commencing with Section 17001), Part 11 (commencing with~~
24 ~~Section 23001), or this part," shall be substituted for the phrase~~
25 ~~"when required by regulations prescribed by the Secretary any~~
26 ~~person made liable for any tax imposed by this title," contained~~
27 ~~therein.~~

28 (2) ~~"Secretary of the Treasury under Section 6011 of the Internal~~
29 ~~Revenue Code for federal income tax purposes or by the Franchise~~
30 ~~Tax Board" shall be substituted for "Secretary."~~

31 (3) ~~To additionally provide that "reportable transaction" includes~~
32 ~~any transaction of a type that the Secretary of the Treasury under~~
33 ~~Section 6011 of the Internal Revenue Code for federal income tax~~
34 ~~purposes or the Franchise Tax Board under this section for~~
35 ~~California income or franchise tax purposes determines as having~~
36 ~~a potential for tax avoidance or evasion including deductions,~~
37 ~~basis, credits, entity classification, dividend elimination, or~~
38 ~~omission of income, and shall be reported on the return or the~~
39 ~~statement required to be made.~~

1 ~~(4) To additionally provide that “listed transaction” includes~~
2 ~~any transaction that is the same as, or substantially similar to, a~~
3 ~~transaction specifically identified by the Secretary of the Treasury~~
4 ~~under Section 6011 of the Internal Revenue Code for federal~~
5 ~~income tax purposes or by the Franchise Tax Board under this~~
6 ~~section for California income or franchise tax purposes, as a tax~~
7 ~~avoidance transaction including deductions, basis, credits, entity~~
8 ~~classification, dividend elimination, or omission of income and~~
9 ~~shall be reported on the return or statement required to be made.~~

10 ~~(A) The Franchise Tax Board shall identify and publish “listed~~
11 ~~transactions” (whether identified by the Secretary of the Treasury~~
12 ~~under Section 6011 of the Internal Revenue Code for federal~~
13 ~~income tax purposes or by the Franchise Tax Board) through the~~
14 ~~use of Franchise Tax Board Notices or other published positions.~~
15 ~~In addition, the “listed transactions” identified and published~~
16 ~~pursuant to the preceding sentence shall be published on the Web~~
17 ~~site of the Franchise Tax Board.~~

18 ~~(B) The Franchise Tax Board shall conduct a public outreach~~
19 ~~program to make taxpayers aware of the new and increased~~
20 ~~penalties associated with the use of tax avoidance transactions~~
21 ~~including deductions, basis, credits, entity classification, dividend~~
22 ~~elimination, or omission of income.~~

23 ~~(5) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
24 ~~Division 3 of Title 2 of the Government Code does not apply to~~
25 ~~any standard, criterion, procedure, determination, rule, notice, or~~
26 ~~guideline established or issued by the Franchise Tax Board~~
27 ~~pursuant to paragraph (4).~~

28 ~~(b) Section 6011(b) of the Internal Revenue Code, relating to~~
29 ~~identification of taxpayer, does not apply and, in lieu thereof,~~
30 ~~Section 18408 shall apply.~~

31 ~~(c) Section 6011(c) of the Internal Revenue Code, relating to~~
32 ~~returns, etc., of DISCs and former DISCs and FSCs and former~~
33 ~~FSCs, does not apply.~~

34 ~~(d) Section 6011(d) of the Internal Revenue Code, relating to~~
35 ~~authority to require information concerning Section 912~~
36 ~~allowances, does not apply.~~

37 ~~(e) Section 6011(e) of the Internal Revenue Code, relating to~~
38 ~~regulations requiring returns on magnetic media, etc., shall take~~
39 ~~into account Section 18408 and shall also include the modifications~~

1 made to Section 6011(e) of the Internal Revenue Code by Section
2 18408:

3 (f) Section 6011(f)(2) of the Internal Revenue Code, relating to
4 incentives, does not apply.

5 SEC. 43. Section 18407 of the Revenue and Taxation Code, as
6 amended by Section 327 of Chapter 183 of the Statutes of 2004,
7 is amended to read:

8 18407. Section 6011 of the Internal Revenue Code, relating to
9 general requirement of return, statement, or list, shall apply, except
10 as otherwise provided.

11 (a) Section 6011(a) of the Internal Revenue Code, relating to
12 general rule, is modified as follows:

13 (1) The phrase “any person liable for any tax imposed by Part
14 10 (commencing with Section 17001), Part 11 (commencing with
15 Section 23001), Part 12 (commencing with Section 27001), or this
16 part,” shall be substituted for the phrase “when required by
17 regulations prescribed by the Secretary any person made liable for
18 any tax imposed by this title,” contained therein.

19 (2) “Secretary of the Treasury under Section 6011 of the Internal
20 Revenue Code for federal income tax purposes or by the Franchise
21 Tax Board” shall be substituted for “Secretary.”

22 (3) To additionally provide that “reportable transaction” includes
23 any transaction of a type that the Secretary of the Treasury under
24 Section 6011 of the Internal Revenue Code for federal income tax
25 purposes or the Franchise Tax Board under this section for
26 California income or franchise tax purposes determines as having
27 a potential for tax avoidance or evasion including deductions,
28 basis, credits, entity classification, dividend elimination, or
29 omission of income, and shall be reported on the return or the
30 statement required to be made.

31 (4) To additionally provide that “listed transaction” includes
32 any transaction that is the same as, or substantially similar to, a
33 transaction specifically identified by the Secretary of the Treasury
34 under Section 6011 of the Internal Revenue Code for federal
35 income tax purposes or by the Franchise Tax Board under this
36 section for California income or franchise tax purposes, as a tax
37 avoidance transaction including deductions, basis, credits, entity
38 classification, dividend elimination, or omission of income and
39 shall be reported on the return or statement required to be made.

1 (A) The Franchise Tax Board shall identify and publish “listed
2 transactions” (whether identified by the Secretary of the Treasury
3 under Section 6011 of the Internal Revenue Code for federal
4 income tax purposes or by the Franchise Tax Board) through the
5 use of Franchise Tax Board Notices or other published positions.
6 In addition, the “listed transactions” identified and published
7 pursuant to the preceding sentence shall be published on the Web
8 site of the Franchise Tax Board.

9 (B) The Franchise Tax Board shall conduct a public outreach
10 program to make taxpayers aware of the new and increased
11 penalties associated with the use of tax avoidance transactions
12 including deductions, basis, credits, entity classification, dividend
13 elimination, or omission of income.

14 (5) Chapter 3.5 (commencing with Section 11340) of Part 1 of
15 Division 3 of Title 2 of the Government Code does not apply to
16 any standard, criterion, procedure, determination, rule, notice, or
17 guideline established or issued by the Franchise Tax Board
18 pursuant to paragraph (4).

19 (b) Section 6011(b) of the Internal Revenue Code, relating to
20 identification of taxpayer, does not apply and, in lieu thereof,
21 Section 18408 shall apply.

22 (c) Section 6011(c) of the Internal Revenue Code, relating to
23 returns, etc., of DISCs and former DISCs and FSCs and former
24 FSCs, does not apply.

25 (d) Section 6011(d) of the Internal Revenue Code, relating to
26 authority to require information concerning Section 912
27 allowances, does not apply.

28 (e) Section 6011(e) of the Internal Revenue Code, relating to
29 regulations requiring returns on magnetic media, etc., shall take
30 into account Section 18408 and shall also include the modifications
31 made to Section 6011(e) of the Internal Revenue Code by Section
32 18408.

33 (f) Section 6011(f)(2) of the Internal Revenue Code, relating to
34 incentives, does not apply.

35 *SEC. 44. Section 18413 of the Revenue and Taxation Code is*
36 *amended to read:*

37 18413. The repeal of any provision in Part 10 (commencing
38 with Section 17001) or Part 11 (commencing with Section 23001)
39 made by the act adding *or amending* this section shall not affect
40 any act done or any right accruing or accrued, or any suit, appeal,

1 or other proceeding having commenced under Part 10 (commencing
2 with Section 17001) or Part 11 (commencing with Section 23001),
3 before that repeal; but all rights and liabilities under that law shall
4 continue, and may be enforced in the same manner, as if that repeal
5 had not been made.

6 *SEC. 45. Section 18414 of the Revenue and Taxation Code is*
7 *amended to read:*

8 18414. Any provision of this part that refers to the application
9 of any portion of this part to a prior period (or which depends upon
10 the application to a prior period of any portion of this part) shall,
11 when appropriate and consistent with the purpose of that provision,
12 be deemed to refer to (or depend upon the application of) the
13 corresponding provision of Part 10 (commencing with Section
14 17001)~~or~~, Part 11 (commencing with Section 23001), *or Part 12*
15 *(commencing with Section 27001)*, as was applicable to the prior
16 period.

17 *SEC. 46. Section 18417 of the Revenue and Taxation Code is*
18 *amended to read:*

19 18417. Provisions in other codes or general law statutes that
20 are related to this part include all of the following:

21 (a) Chapter 20.6 (commencing with Section 9891) of Division
22 3 of the Business and Professions Code, relating to tax preparers.

23 (b) Sections 1502, 2204 to 2206, inclusive, 6210, 6810, 8210,
24 and 8810 of the Corporations Code, relating to the corporation
25 officer statement penalty.

26 (c) Section 2104 of the Corporations Code, which prevents the
27 application of any provision of this part against any foreign lending
28 institution whose activities in this state are limited to those
29 described in subdivision (d) of Section 191 of the Corporations
30 Code.

31 (d) Sections 15700 to 15702.1, inclusive, of the Government
32 Code, relating to the Franchise Tax Board.

33 (e) Part 10 (commencing with Section 17001) of this division,
34 relating to the Personal Income Tax Law.

35 (f) Part 10.5 (commencing with Section 20501) of this division,
36 relating to the Senior Citizens Property Tax Assistance and
37 Postponement Law.

38 (g) Part 10.7 (commencing with Section 21001) of this division,
39 relating to the Taxpayers' Bill of Rights.

(h) Part 11 (commencing with Section 23001) of this division, relating to the Corporation Tax Law.

(i) Part 12 (commencing with Section 27001) of this division, relating to the Business Net Receipts Tax Law.

SEC. 47. Article 3 (commencing with Section 18421) is added to Chapter 1 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 3. Other Matters

18421. (a) Notwithstanding any statute, ordinance, regulation, rule or decision to the contrary, no city, county, city and county, governmental subdivision, district, public and quasi-public corporation, municipal corporation, whether incorporated or not or whether chartered or not, shall levy or collect or cause to be levied or collected any tax upon income which is excludable from gross income and exempt from state taxes pursuant to Section 24320.

(b) This section shall not be construed to authorize any such entity to levy a tax on, according to, or measured by, income or profits paid or accrued.

SEC. 48. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11, and Article 3 (commencing with Section 27771) of Chapter 4 of Part 12, and the accompanying instructions for filing those returns, in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns and instructions described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and instructions and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns and instructions that shall be incorporated

1 before the State Board of Equalization approves the form and
2 manner of the returns and instructions.

3 (b) Any payments and credits shown on the return, together
4 with any other credits associated with that person's account, of a
5 person that elects to report qualified use tax on an acceptable tax
6 return shall be applied in the following order:

7 (1) Taxes imposed under Part 10 (commencing with Section
8 17001) or Part 11 (commencing with Section 23001), including
9 penalties and interest, if any, imposed under this part.

10 (2) Qualified use tax as reported on the acceptable tax return,
11 in accordance with Section 6452.1.

12 (c) The Franchise Tax Board shall transfer the qualified use tax
13 received pursuant to Section 6452.1, and any information the State
14 Board of Equalization deems necessary for its administration of
15 the use tax, to the State Board of Equalization within 60 days from
16 the date the use tax is received or the acceptable tax return is
17 processed, whichever is later.

18 (d) This section shall be operative for returns filed for taxable
19 years beginning on and after January 1, 2010.

20 (e) The amendments made by the act adding this subdivision
21 shall apply to returns filed for taxable years beginning on and after
22 January 1, 2011.

23 *SEC. 49. Section 18535 of the Revenue and Taxation Code is*
24 *amended to read:*

25 18535. (a) In lieu of electing nonresident partners filing a
26 return pursuant to Section 18501, the Franchise Tax Board may,
27 pursuant to requirements and conditions set forth in forms and
28 instructions, provide for the filing of a group return for one or more
29 electing nonresident partners by a partnership doing business in,
30 or deriving income from, sources in California. The tax rate or
31 rates applicable to each electing partner's distributive share shall
32 consist of the highest marginal rate or rates provided by Part 10
33 (commencing with Section 17001) plus, in the case of any electing
34 nonresident partner included on the group return who would be
35 subject to Section 17043 when filing individually, an additional
36 tax rate of 1 percent. Except as provided in subdivision (b), no
37 deductions shall be allowed except those necessary to determine
38 each partner's distributive share, and no credits shall be allowed
39 except those directly attributable to the partnership. As required
40 by the Franchise Tax Board, the partnership as agent for the

1 electing partners shall make the payments of tax, additions to tax,
2 interest, and penalties otherwise required to be paid by the electing
3 partners.

4 (b) Deductions provided by Chapter 5 (commencing with
5 Section 17501) of Part 10, attributable to earned income of a
6 partner derived from a partnership filing a group return on behalf
7 of electing nonresident partners under subdivision (a), shall be
8 allowed if the partner certifies, in the form and manner as the
9 Franchise Tax Board may prescribe, that he or she has no earned
10 income from any other source.

11 (c) This section shall also be applicable to a nonresident
12 shareholder of a corporation which is treated as an “S” corporation
13 under ~~Chapter 4.5 (commencing with Section 23800) of Part 11~~
14 *Article 2.5 (commencing with Section 17100) of Chapter 3 of Part*
15 *10*. In that case, the provisions of subdivisions (a) and (b) are
16 modified to refer to “shareholder or shareholders” in lieu of
17 “partners” and to “S” corporation in lieu of “partnership.”

18 (d) This section shall also be applicable to a nonresident
19 individual with a membership or economic interest in a limited
20 liability company, registered limited liability partnership, or foreign
21 limited liability partnership, which is classified as a partnership
22 for California tax purposes. In that case, the provisions of
23 subdivisions (a) and (b) are modified to refer to “holders of a
24 membership or economic interest” in lieu of “partners” and to
25 “limited liability companies” in lieu of “partnerships,” and
26 “partnerships” shall include registered limited liability partnerships
27 and foreign limited liability partnerships.

28 (e) The Franchise Tax Board may adjust the income of an
29 electing nonresident taxpayer included in a group return filed under
30 this section to properly reflect income under Part 10 (commencing
31 with Section 17001), including Chapter 11 thereof (commencing
32 with Section 17951), this part (commencing with Section 18401),
33 and Part 11 (commencing with Section 23001), including Chapter
34 17 thereof (commencing with Section 25101).

35 *SEC. 50. Article 2.5 (commencing with Section 18611) is added*
36 *to Chapter 2 of Part 10.2 of Division 2 of the Revenue and Taxation*
37 *Code, to read:*

Article 2.5. *Business Entities*

18611. (a) Except as provided in subdivision (b), every taxpayer subject to the tax imposed by Part 12 (commencing with Section 27001) shall, on or before the 15th day of the third month following the close of its taxable year, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the taxable year, all the facts as it may by rule, or otherwise, require in order to carry out that part of this part.

(b) In the case of any taxpayer that has gross receipts (as defined in Article 3 (commencing with Section 27521) of Chapter 3 of Part 12) of less than \$500,000 during the taxable year, including for this purpose any gross receipts that are part of the unitary business of the taxpayer, no return is required to be filed for that taxable year under this article.

SEC. 51. Section 18612 is added to the Revenue and Taxation Code, to read:

18612. (a) The Franchise Tax Board may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by Part 12 (commencing with Section 27001), in the manner and form as the Franchise Tax Board may determine. No extension or extensions shall aggregate more than seven months from the due date for filing the return.

(b) An extension of time granted pursuant to this section is not an extension of time for payment of tax required to be paid on or before the due date of the return without regard to extension. Underpayment of tax penalties shall be imposed as provided by law without regard to any extension granted under this section.

SEC. 52. Section 18613 is added to the Revenue and Taxation Code, to read:

18613. (a) In cases where receivers, trustees in a case under Title 11 of the United States Code, or assignees are operating the property or business of a business entity those receivers, trustees, or assignees shall make returns for that business entity in the same manner and form as that business entity is required to make a return.

(b) Any tax due on the basis of returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the business entity of whose business or property they have custody and control.

SEC. 53. *Section 18621 of the Revenue and Taxation Code is amended to read:*

18621. Except as otherwise provided by the Franchise Tax Board and in Section 18621.5, any return, declaration, statement, or other document required to be made under any provision of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, this part, or any applicable regulation shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. Those returns, and all other returns, declarations, statements, or other documents or copies thereof required, shall be in any form as the Franchise Tax Board may from time to time prescribe, including, but not limited to, on paper, on magnetic media pursuant to Section 19524, or by electronic technology or electronic imaging technology pursuant to Section 18621.5, and shall be filed with the Franchise Tax Board. The Franchise Tax Board shall prepare blank forms for the returns, declarations, statements, or other documents and shall distribute them throughout the state and furnish them upon application. Failure to receive or secure the form does not relieve any taxpayer from making any return, declaration, statement, or other document required.

SEC. 54. *Section 18622 of the Revenue and Taxation Code is amended to read:*

18622. (a) If any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year of any taxpayer is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, *or gross receipts or purchases*, that taxpayer shall report each change or correction, or the results of the renegotiation, within six months after the date of each final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of the determination or state wherein it is erroneous. For any individual subject to tax under Part 10 (commencing with Section 17001), changes or corrections need not be reported unless they increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

(b) Any taxpayer filing an amended return with the Commissioner of Internal Revenue shall also file within six months thereafter an amended return with the Franchise Tax Board which shall contain any information as it shall require. For any individual subject to tax under Part 10 (commencing with Section 17001), an amended return need not be filed unless the change therein would increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

(c) Notification of a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or renegotiation of a contract or subcontract with the United States that results in a change in any item or the filing of an amended return must be sufficiently detailed to allow computation of the resulting California tax change and shall be reported in the form and manner as prescribed by the Franchise Tax Board.

(d) For purposes of this part, the date of each final federal determination shall be the date on which each adjustment or resolution resulting from an Internal Revenue Service examination is assessed pursuant to Section 6203 of the Internal Revenue Code.

SEC. 55. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) ~~(1)~~—Every partnership, on or before the 15th day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the partners.

~~(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935, on or before the 15th day of the fourth month following the close of its taxable year, shall make a return for that taxable year, containing the information identified in paragraph (1). In the case of a limited partnership not doing business in this state, the~~

1 ~~Franchise Tax Board shall prescribe the manner and extent to~~
2 ~~which the information identified in paragraph (1) shall be included~~
3 ~~with the return required by this paragraph.~~

4 (b) Each partnership required to file a return under subdivision
5 (a) for any taxable year shall (on or before the day on which the
6 return for that taxable year was required to be filed) furnish to each
7 person who is a partner or who holds an interest in that partnership
8 as a nominee for another person at any time during that taxable
9 year a copy of the information required to be shown on that return
10 as may be required by regulations.

11 (c) Any person who holds an interest in a partnership as a
12 nominee for another person shall do both of the following:

13 (1) Furnish to the partnership, in the manner prescribed by the
14 Franchise Tax Board, the name, address, and taxpayer identification
15 number of that other person, and any other information for that
16 taxable year as the Franchise Tax Board may by form and
17 regulation prescribe.

18 (2) Furnish to that other person, in the manner prescribed by
19 the Franchise Tax Board, the information provided by that
20 partnership under subdivision (b).

21 (d) The provisions of Section 6031(d) of the Internal Revenue
22 Code, relating to the separate statement of items of unrelated
23 business taxable income, shall apply.

24 (e) The provisions of Section 6031(f) of the Internal Revenue
25 Code, relating to electing investment partnerships, shall apply,
26 except as otherwise provided.

27 *SEC. 56. Section 18633.5 of the Revenue and Taxation Code*
28 *is repealed.*

29 ~~18633.5. (a) Every limited liability company which is classified~~
30 ~~as a partnership for California tax purposes that is doing business~~
31 ~~in this state, organized in this state, or registered with the Secretary~~
32 ~~of State shall file its return on or before the fifteenth day of the~~
33 ~~fourth month following the close of its taxable year, stating~~
34 ~~specifically the items of gross income and the deductions allowed~~
35 ~~by Part 10 (commencing with Section 17001). The return shall~~
36 ~~include the names, addresses, and taxpayer identification numbers~~
37 ~~of the persons, whether residents or nonresidents, who would be~~
38 ~~entitled to share in the net income if distributed and the amount~~
39 ~~of the distributive share of each person. The return shall contain~~
40 ~~or be verified by a written declaration that it is made under penalty~~

1 of perjury, signed by one of the limited liability company members.
2 In the case of a limited liability company not doing business in
3 this state, and subject to the tax imposed by subdivision (b) of
4 Section 17941, the Franchise Tax Board shall, for returns required
5 to be filed on or after January 1, 1998, prescribe the manner and
6 extent to which the information identified in this subdivision shall
7 be included with the return required by this subdivision.

8 (b) Each limited liability company required to file a return under
9 subdivision (a) for any limited liability company taxable year shall,
10 on or before the day on which the return for that taxable year was
11 required to be filed, furnish to each person who holds an interest
12 in that limited liability company at any time during that taxable
13 year a copy of that information required to be shown on that return
14 as may be required by forms and instructions prescribed by the
15 Franchise Tax Board.

16 (c) Any person who holds an interest in a limited liability
17 company as a nominee for another person shall do both of the
18 following:

19 (1) Furnish to the limited liability company, in the manner
20 prescribed by the Franchise Tax Board, the name, address, and
21 taxpayer identification number of that person, and any other
22 information for that taxable year as the Franchise Tax Board may
23 prescribe by forms and instructions.

24 (2) Furnish to that other person, in the manner prescribed by
25 the Franchise Tax Board, the information provided by that limited
26 liability company under subdivision (b):

27 (d) The provisions of Section 6031(d) of the Internal Revenue
28 Code, relating to the separate statement of items of unrelated
29 business taxable income, shall apply.

30 (e) (1) A limited liability company shall file with its return
31 required under subdivision (a), in the form required by the
32 Franchise Tax Board, the agreement of each nonresident member
33 to file a return pursuant to Section 18501, to make timely payment
34 of all taxes imposed on the member by this state with respect to
35 the income of the limited liability company, and to be subject to
36 personal jurisdiction in this state for purposes of the collection of
37 income taxes, together with related interest and penalties, imposed
38 on the member by this state with respect to the income of the
39 limited liability company. If the limited liability company fails to
40 timely file the agreements on behalf of each of its nonresident

1 members, then the limited liability company shall, at the time set
2 forth in subdivision (f), pay to this state on behalf of each
3 nonresident member of whom an agreement has not been timely
4 filed an amount equal to the highest marginal tax rate in effect
5 under Section 17041, in the case of members which are individuals,
6 estates, or trusts, and Section 23151, in the case of members that
7 are corporations, multiplied by the amount of the member's
8 distributive share of the income source to the state reflected on the
9 limited liability company's return for the taxable period, reduced
10 by the amount of tax previously withheld and paid by the limited
11 liability company pursuant to Section 18662 and the regulations
12 thereunder with respect to each nonresident member. A limited
13 liability company shall be entitled to recover the payment made
14 from the member on whose behalf the payment was made.

15 (2) If a limited liability company fails to attach the agreement
16 or to timely pay the payment required by paragraph (1), the
17 payment shall be considered the tax of the limited liability company
18 for purposes of the penalty prescribed by Section 19132 and interest
19 prescribed by Section 19101 for failure to timely pay the tax.
20 Payment of the penalty and interest imposed on the limited liability
21 company for failure to timely pay the amount required by this
22 subdivision shall extinguish the liability of a nonresident member
23 for the penalty and interest for failure to make timely payment of
24 all taxes imposed on that member by this state with respect to the
25 income of the limited liability company.

26 (3) No penalty or interest shall be imposed on the limited
27 liability company under paragraph (2) if the nonresident member
28 timely files and pays all taxes imposed on the member by this state
29 with respect to the income of the limited liability company.

30 (f) Any agreement of a nonresident member required to be filed
31 pursuant to subdivision (e) shall be filed at either of the following
32 times:

33 (1) The time the annual return is required to be filed pursuant
34 to this section for the first taxable period for which the limited
35 liability company became subject to tax pursuant to Chapter 10.6
36 (commencing with Section 17941).

37 (2) The time the annual return is required to be filed pursuant
38 to this section for any taxable period in which the limited liability
39 company had a nonresident member on whose behalf an agreement
40 described in subdivision (e) has not been previously filed.

~~(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.~~

~~(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001).~~

~~(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).~~

~~(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.~~

~~(3) The return required under paragraph (1) shall be filed on or before the fifteenth day of the fourth month after the close of the taxable year of the owner subject to tax under Part 10 (commencing with Section 17001) of Division 2 or on or before the fifteenth day of the third month after the close of the taxable year of the owner subject to tax under Chapter 2 (commencing with Section 23101) of Part 11 of Division 2, whichever is applicable.~~

~~(4) For limited liability companies disregarded pursuant to Section 23038, "taxable year of the owner" shall be substituted for "taxable year" in Sections 17941 and 17942.~~

~~(j) The amendments made by the act adding this subdivision apply to taxable years beginning on or after January 1, 2005.~~

SEC. 57. Section 18662 of the Revenue and Taxation Code is amended to read:

1 18662. (a) The Franchise Tax Board may, by regulation,
2 require any person, in whatever capacity acting, including lessees
3 or mortgagors of real or personal property, fiduciaries, employers,
4 and any officer or department of the state, or any political
5 subdivision or agency of the state, or any city organized under a
6 freeholder's charter, or any political body not a subdivision or
7 agency of the state, having the control, receipt, custody, disposal,
8 or payment of items of income specified in subdivision (b), to
9 withhold an amount, determined by the Franchise Tax Board to
10 reasonably represent the amount of tax due when the items of
11 income are included with other income of the taxpayer, and to
12 transmit the amount withheld to the Franchise Tax Board at the
13 time as it may designate.

14 (b) The items of income referred to in subdivision (a) are
15 interest, dividends, rents, prizes and winnings, premiums, annuities,
16 emoluments, compensation for services, including bonuses,
17 partnership income or gains, and other fixed or determinable annual
18 or periodical gains, profits, and income.

19 (c) The Franchise Tax Board may authorize the tax under
20 subdivision (a) to be deducted and withheld from the interest upon
21 any securities the owners of which are not known to the
22 withholding agent.

23 (d) Any person that fails to withhold from any payments any
24 amounts required to be withheld by this section or fails to remit
25 the taxes withheld is liable for the amount specified in Section
26 18668.

27 (e) (1) This subdivision applies to any disposition of a
28 California real property interest by:

29 (A) Any person, ~~other than either of the following:~~ *subject to*
30 *tax under Part 10 (commencing with Section 17001).*

31 ~~(i) Except as otherwise provided in this subdivision, a~~
32 ~~corporation, including an entity classified for tax purposes as a~~
33 ~~corporation under Part 11 (commencing with Section 23001).~~

34 ~~(ii) Except as otherwise provided in this subdivision, a~~
35 ~~partnership, as determined in accordance with Subchapter K of~~
36 ~~Chapter 1 of Subtitle A of the Internal Revenue Code, including~~
37 ~~an entity classified as a partnership for tax purposes under Part 10~~
38 ~~(commencing with Section 17001).~~

39 ~~(B) A corporation or partnership passthrough entity, if that~~
40 ~~corporation or partnership immediately after the transfer of the~~

~~1 title to the California real property has no permanent place of
2 business in California. For purposes of this subdivision, a
3 corporation or partnership has no permanent place of business in
4 California if all of the following apply: any income resulting from
5 the disposition of California real property, when distributed, is
6 subject to tax under Part 10 (commencing with Section 17001).
7 For purposes of this subparagraph, “passthrough entity” means
8 a partnership or an “S” corporation.~~

~~9 (i) It is not organized and existing under the laws of California.~~

~~10 (ii) It does not qualify with the office of the Secretary of State
11 to transact business in California.~~

~~12 (iii) It does not maintain and staff a permanent office in
13 California.~~

14 (2) (A) Except as provided in subparagraph (B), in the case of
15 any disposition of a California real property interest by a transferor
16 described in paragraph (1), the transferee, including for this purpose
17 any intermediary or accommodator in a deferred exchange, is
18 required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales
19 price of the California real property conveyed.

20 (B) If the transferor makes an election under this subparagraph,
21 the transferee, including any intermediary or accommodator in a
22 deferred exchange, is required to withhold an amount equal to an
23 amount certified by the transferor in writing under penalty of
24 perjury. The amount certified shall not be less than the gain
25 required to be recognized under Part 10 (commencing with Section
26 17001) and Part 11 (commencing with Section 23001) on the
27 disposition of the California real property multiplied by the rate
28 specified in either Section 23151 or Section 23186, as applicable;
29 for transferors that are corporations, or the highest rate specified
30 in Section 17041 for transferors other than corporations. For
31 purposes of applying the previous sentence, the following shall
32 apply:

33 (i) The highest rate specified in Section 17041 is determined
34 without regard to any other tax rate specified under Part 10
35 (commencing with Section 17001) irrespective of whether the
36 applicable statute provides that tax shall be treated as if imposed
37 under Section 17041.

38 (ii) ~~For corporations that are “S” corporations subject to the~~
39 ~~modified tax rate specified in Section 23802, the rate shall be the~~
40 ~~sum of the rate specified in subdivision (b) of Section 23802 and~~

1 ~~the highest rate specified in Section 17041, as described in clause~~
2 ~~(i):~~

3 (C) (i) The written certification required by subparagraph (B)
4 shall be in a form, as prescribed by the Franchise Tax Board. The
5 form shall provide as follows:

6 “Title and escrow persons and exchange accommodators are not
7 authorized to provide legal or accounting advice for purposes of
8 determining withholding amounts. Transferors are strongly
9 encouraged to consult with a competent tax professional for this
10 purpose.”

11 (ii) The Franchise Tax Board shall make this form available
12 electronically on its Web site in a format that allows a transferor
13 to complete and print the form. The Franchise Tax Board shall
14 also provide electronic means to enable the transferor to estimate
15 the amount of gain required to be recognized by the transferor in
16 the transaction. Any form or worksheet, electronic or otherwise,
17 developed for this purpose shall provide as follows:

18 “Title and escrow persons and exchange accommodators are not
19 authorized to provide legal or accounting advice for purposes of
20 determining withholding amounts. Transferors are strongly
21 encouraged to consult with a competent tax professional for this
22 purpose.”

23 (3) Notwithstanding any other provision of this subdivision, all
24 of the following shall apply:

25 (A) No transferee is required to withhold any amount under this
26 subdivision unless the sales price of the California real property
27 conveyed exceeds one hundred thousand dollars (\$100,000).

28 (B) No transferee, other than an intermediary or an
29 accommodator in a deferred exchange, is required to withhold any
30 amount under this subdivision unless written notification of the
31 withholding requirements of this subdivision has been provided
32 by the real estate escrow person.

33 (C) (i) No transferee, trustee under a deed of trust, or mortgagee
34 under a mortgage with a power of sale is required to withhold
35 under this subdivision when the transferee has acquired California
36 real property at a sale pursuant to a power of sale under a mortgage
37 or deed of trust or a sale pursuant to a decree of foreclosure or has
38 acquired the property by a deed in lieu of foreclosure.

1 (ii) No transferee is required to withhold under this subdivision
2 when the transferor is a bank acting as trustee other than a trustee
3 of a deed of trust.

4 (D) No transferee, including for this purpose any intermediary
5 or accommodator in a deferred exchange, is required to withhold
6 any amount under this subdivision if the transferee, in good faith
7 and based on all the information of which he or she has knowledge,
8 relies on a written certificate executed by the transferor, certifying,
9 under penalty of perjury, one of the following:

10 (i) (I) The California real property being conveyed is the seller's
11 or decedent's principal residence, within the meaning of Section
12 121 of the Internal Revenue Code.

13 (II) The last use of the property being conveyed was use by the
14 transferor as the transferor's principal residence within the meaning
15 of Section 121 of the Internal Revenue Code.

16 (ii) (I) The California real property being conveyed is being
17 exchanged, or will be exchanged, for property of like kind, within
18 the meaning of Section 1031 of the Internal Revenue Code, but
19 only to the extent of the amount of the gain not required to be
20 recognized for California income or franchise tax purposes under
21 Section 1031 of the Internal Revenue Code.

22 (II) Subclause (I) may not apply if an exchange does not qualify
23 for nonrecognition treatment for California income or franchise
24 tax purposes under Section 1031 of the Internal Revenue Code, in
25 whole or in part, due to the failure of the transaction to comply
26 with the provisions of Section 1031(a)(3) of the Internal Revenue
27 Code, relating to the requirement that property be identified and
28 that the exchange be completed not more than 180 days after the
29 transfer of the exchanged property.

30 (III) In any case where clause (ii) applies, the transferee,
31 including for this purpose any intermediary or accommodator in
32 a deferred exchange, is required to notify the Franchise Tax Board
33 in writing within 10 days of the expiration of the statutory periods
34 specified in Section 1031(a)(3) of the Internal Revenue Code and
35 thereafter remit the applicable withholding amounts determined
36 under this subdivision in accordance with paragraph (4).

37 (iii) The California real property has been compulsorily or
38 involuntarily converted, within the meaning of Section 1033 of
39 the Internal Revenue Code, and the transferor intends to acquire
40 property similar or related in service or use so as to be eligible for

1 nonrecognition of gain for California income tax purposes under
2 Section 1033 of the Internal Revenue Code.

3 (iv) The transaction will result in either a net loss or a net gain
4 not required to be recognized for California income or franchise
5 tax purposes.

6 ~~(v) The transferor is a corporation with a permanent place of~~
7 ~~business in California.~~

8 (E) (i) In the case of any transaction otherwise subject to this
9 subdivision that qualifies as an “installment sale,” within the
10 meaning of Section 453(b) of the Internal Revenue Code, for
11 California income tax purposes, the provisions of this subdivision
12 shall be separately applied to each principal payment to be made
13 under the terms of the installment sale agreement between the
14 parties.

15 (ii) For purposes of clause (i), subparagraph (A) of paragraph
16 (3) does not apply to each individual payment to be received under
17 the terms of the installment sale agreement.

18 (4) (A) Amounts withheld and payments made in accordance
19 with this subdivision shall be reported and remitted to the Franchise
20 Tax Board in the form and manner and at the time specified by
21 the Franchise Tax Board. Notwithstanding the foregoing, funds
22 withheld on individual transactions by real estate escrow persons
23 may, at the option of the real estate escrow person, be remitted by
24 the 20th day of the month following the close of escrow for the
25 individual transaction, or may be remitted on a monthly basis in
26 combination with other transactions closed during that month.

27 (B) The transferor shall submit a copy of the written certificate
28 and supporting documentation for the reduced withholding
29 specified in subparagraph (B) of paragraph (2) or subparagraph
30 (D) of paragraph (3), executed by the transferor, to the Franchise
31 Tax Board upon request.

32 (5) For purposes of this subdivision, “California real property
33 interest” means an interest in real property located in California
34 and defined in Section 897(c)(1)(A)(i) of the Internal Revenue
35 Code.

36 (6) For purposes of this subdivision, “real estate escrow person”
37 means any of the following persons involved in the real estate
38 transaction:

39 (A) The person, including any attorney, escrow company, or
40 title company, responsible for closing the transaction.

1 (B) If no person described in subparagraph (A) is responsible
2 for closing the transaction, then any other person who receives
3 and disburses the consideration or value for the interest or property
4 conveyed.

5 (7) (A) Unless the real estate escrow person provides
6 “assistance,” it shall be unlawful for any real estate escrow person
7 to charge any customer for complying with the requirements of
8 this subdivision.

9 (B) For purposes of this paragraph, “assistance” includes, but
10 is not limited to, helping the parties clarify with the Franchise Tax
11 Board the issue of whether withholding is required under this
12 subdivision or, upon request of the parties, withholding an amount
13 under this subdivision and remitting that amount to the Franchise
14 Tax Board.

15 (C) For purposes of this paragraph, “assistance” does not include
16 providing the written notification of the withholding requirements
17 of this subdivision.

18 (D) In a case where the real estate escrow person provides
19 “assistance” in complying with the withholding requirements of
20 this subdivision, it shall be unlawful for the real estate escrow
21 person to charge any customer a fee that exceeds forty-five dollars
22 (\$45).

23 (8) For purposes of this subdivision, “sales price” means the
24 sum of all of the following:

25 (A) The cash paid, or to be paid, but excluding for this purpose
26 any stated or unstated interest or original issue discount, as
27 determined under Sections 1271 through 1275, inclusive, of the
28 Internal Revenue Code.

29 (B) The fair market value of other property transferred, or to be
30 transferred.

31 (C) The outstanding amount of any liability assumed by the
32 transferee or to which the California real property interest is subject
33 immediately before and after the transfer.

34 (9) The Franchise Tax Board may prescribe, by forms,
35 instructions, published notices, or regulations, any requirements
36 necessary for the efficient administration of this subdivision
37 relating to the treatment of “de minimis” amounts otherwise
38 required under this section.

39 (f) Withholding is not required under this section with respect
40 to wages, salaries, fees, or other compensation paid by a

1 corporation for services performed in California for that corporation
2 to a nonresident corporate director for director services, including
3 attendance at a board of directors' meeting.

4 (g) In the case of any payment described in subdivision (f), the
5 person making the payment shall do each of the following:

6 (1) File a return with the Franchise Tax Board at the time and
7 in the form and manner specified by the Franchise Tax Board.

8 (2) Provide the payee with a statement at the time and in the
9 form and manner specified by the Franchise Tax Board.

10 (h) (1) The amendments to this section made by Chapter 488
11 of the Statutes of 2002 apply to dispositions of California real
12 property interests that occur on or after January 1, 2003.

13 (2) In the case of any payments received on or after January 1,
14 2003, pursuant to an installment sale agreement relating to a
15 disposition occurring before January 1, 2003, the amendments to
16 this section made by Chapter 488 of the Statutes of 2002 do not
17 apply to those payments.

18 (i) (1) The amendments made to this section by the act adding
19 this subdivision shall apply to dispositions of California real
20 property interests that occur on or after January 1, 2009.

21 (2) In the case of any payments received on or after January 1,
22 2009, pursuant to an installment sale agreement relating to a
23 disposition occurring before January 1, 2009, the amendments
24 made to this section by the act adding this subdivision do not apply
25 to those payments.

26 *SEC. 58. Section 18666 of the Revenue and Taxation Code is*
27 *amended to read:*

28 18666. (a) Section 1446 of the Internal Revenue Code shall
29 apply to the extent that the amounts represent income from
30 California sources, except as otherwise provided.

31 (b) (1) The rate of tax referred to in Section 1446(b)(2)(A) of
32 the Internal Revenue Code shall be the maximum tax rate specified
33 in Section 17041, rather than the rate specified in Section 1 of the
34 Internal Revenue Code.

35 (2) ~~The rate of tax referred to in Section 1446(b)(2)(B) of the~~
36 ~~Internal Revenue Code shall be the rate specified in Section 23151,~~
37 ~~23181, or 23183, as applicable, rather than the rate specified in~~
38 ~~Section 11 of the Internal Revenue Code not apply.~~

39 *SEC. 59. Section 18668 of the Revenue and Taxation Code is*
40 *amended to read:*

1 18668. (a) Every person required under this article to deduct
2 and withhold any tax is hereby made liable for that tax, to the
3 extent provided by this section. Any amount required to be
4 deducted and paid to the Franchise Tax Board under this article
5 shall be considered the tax of that person. Unless it is shown that
6 the failure is due to reasonable cause, any person who fails to
7 withhold from any payments any amount required to be withheld
8 under this article or who fails to transmit the withheld amounts to
9 the Franchise Tax Board on or before the due date required by
10 regulations is liable for the amount actually withheld, or the amount
11 of taxes due from the taxpayer to whom the payments are made,
12 whichever is greater, but not in excess of the amount required to
13 be withheld.

14 (b) If any amount required to be withheld under this article is
15 not paid to the Franchise Tax Board on or before the due date
16 required by regulations, interest shall be assessed at the adjusted
17 annual rate established pursuant to Section 19521, computed from
18 the due date to the date paid.

19 (c) Whenever any person has withheld any amount pursuant to
20 this article, the amount so withheld shall be held to be a special
21 fund in trust for the State of California.

22 (d) In lieu of the amount provided for in subdivision (a), unless
23 it is shown that the failure to withhold is due to reasonable cause,
24 whenever any transferee is required to withhold any amount
25 pursuant to subdivision (e) of Section 18662, the transferee is liable
26 for the greater of the following amounts for failure to withhold
27 only after the transferee, as specified, is notified in writing of the
28 requirements under subdivision (e) of Section 18662:

29 (1) Five hundred dollars (\$500).

30 (2) Ten percent of the amount required to be withheld under
31 subdivision (e) of Section 18662.

32 (e) (1) Unless it is shown that the failure to notify is due to
33 reasonable cause, the real estate escrow person is liable for the
34 amount specified in subdivision (d), when written notification of
35 the withholding requirements of subdivision (e) of Section 18662
36 is not provided to the transferee, other than a transferee that is an
37 intermediary or accommodator in a deferred exchange, and the
38 California real property disposition is subject to withholding under
39 subdivision (e) of Section 18662.

(2) The real estate escrow person shall provide written notification to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) in substantially the same form as follows:

“In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price or the amount that is specified in a written certificate executed by the transferor in the case of a disposition of California real property interest by either:

1. A seller who is an individual, trust, or estate or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR

2. ~~A corporate or partnership seller that has no permanent place of business in California immediately after the transfer of title to the California real property.~~ *passthrough entity, if any income resulting from the disposition of California real property, when distributed, is subject to tax under Part 10 (commencing with Section 17001). For purposes of this subparagraph, “passthrough entity” means a partnership or an “S” corporation.*

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR

2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation or a partnership with a permanent place of business in California, OR

3. ~~The seller, who is an individual, trust, estate, partnership, or a corporation without a permanent place of business in California~~ *passthrough entity, if any income resulting from the disposition of California real property by the passthrough entity, when distributed, is subject to tax under Part 10 (commencing with Section 17001),* executes a written certificate, under the penalty of perjury, of any of the following:

1 A. The California real property being conveyed is the seller's
2 or decedent's principal residence, within the meaning of Section
3 121 of the Internal Revenue Code.

4 B. The last use of the property being conveyed was use by the
5 transferor as the transferor's principal residence within the meaning
6 of Section 121 of the Internal Revenue Code.

7 C. The California real property being conveyed is or will be
8 exchanged for property of like kind, within the meaning of Section
9 1031 of the Internal Revenue Code, but only to the extent of the
10 amount of gain not required to be recognized for California income
11 tax purposes under Section 1031 of the Internal Revenue Code.

12 D. The California real property has been compulsorily or
13 involuntarily converted, within the meaning of Section 1033 of
14 the Internal Revenue Code, and that the seller intends to acquire
15 property similar or related in service or use so as to be eligible for
16 nonrecognition of gain for California income tax purposes under
17 Section 1033 of the Internal Revenue Code.

18 E. The California real property transaction will result in a loss
19 or a net gain not required to be recognized for California income
20 tax purposes.

21 The seller is subject to penalty for knowingly filing a fraudulent
22 certificate for the purpose of avoiding the withholding
23 requirement."

24 (3) The real estate escrow person is not liable under this
25 subdivision if the tax due as a result of the disposition of California
26 real property is paid by the original or extended due date of the
27 transferor's return for the taxable year in which the disposition
28 occurred.

29 (4) The real estate escrow person or transferee is not liable under
30 paragraph (1) or subdivision (d), if the failure to withhold is the
31 result of his or her reliance, based on good faith and on all the
32 information of which he or she has knowledge, upon a written
33 certificate executed by the transferor under penalty of perjury
34 pursuant to subparagraph (D) of paragraph (3) of subdivision (e)
35 of Section 18662.

36 (5) Any transferor who for the purpose of avoiding the
37 withholding requirements of subdivision (e) of Section 18662
38 knowingly executes a false certificate pursuant to that section is
39 liable for twice the amount specified in subdivision (d).

(f) The amount of tax required to be deducted, withheld, and remitted under this article shall be assessed, collected, and paid upon notice and demand. Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any amount due under this article.

SEC. 60. Section 19001 of the Revenue and Taxation Code is amended to read:

19001. Except as provided by Article 2 (commencing with Section 19021), the tax imposed under Part 10 (commencing with Section 17001), *Part 11 (commencing with Section 23001)*, and ~~Part 11~~ 12 (commencing with Section ~~23001~~ 27001) shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

SEC. 61. Section 19007 of the Revenue and Taxation Code is amended to read:

19007. Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the taxes imposed under Part 10 (commencing with Section 17001)-~~or~~, Part 11 (commencing with Section 23001), *or Part 12 (commencing with Section 27001)* for the taxable year.

SEC. 62. Section 19009 of the Revenue and Taxation Code is amended to read:

19009. (a) Whenever any person or employer who is required to collect, account for, and pay over any tax—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over the tax, or (B) fails to make deposits, payments, or returns of the tax, and

(2) Is notified, by notice delivered in hand or by registered mail of the failure, then all the requirements of subdivision (b) shall be complied with. In the case of a corporation, partnership, limited liability company, or trust, notice to an officer, partner, manager, member, or trustee, shall, for purposes of this section, be deemed to be sufficient notice to the corporation, partnership, limited liability company, or trust and to all officers, partners, managers, members, trustees, and employees thereof.

(b) Any person or employer who is required to collect, account for, and pay over any tax imposed by Part 10 (commencing with Section 17001)-~~or~~, Part 11 (commencing with Section 23001), *or*

1 *Part 12 (commencing with Section 27001)*, if notice has been
2 delivered to that person or employer in accordance with subdivision
3 (a), shall collect the taxes, which become collectible after delivery
4 of the notice, shall (not later than the end of the second banking
5 day after any amount of the taxes is collected) deposit that amount
6 in a separate account in a bank located within the limits of this
7 state, and shall keep the amount of those taxes in that account until
8 payment over to the Franchise Tax Board. The account shall be
9 designated as a special fund in trust for the Franchise Tax Board,
10 payable to the Franchise Tax Board by that person or employer as
11 trustee.

12 (c) Whenever the Franchise Tax Board is satisfied, with respect
13 to any notification made under subdivision (a), that all requirements
14 of law and regulations with respect to the taxes, will henceforth
15 be complied with, it may cancel the notification. The cancellation
16 shall take effect at the time as is specified in the notice of the
17 cancellation.

18 *SEC. 63. Section 19011.7 is added to the Revenue and Taxation*
19 *Code, to read:*

20 *19011.7. (a) All payments required under this part, regardless*
21 *of the taxable year to which the payments apply, shall be remitted*
22 *to the Franchise Tax Board by electronic funds transfer pursuant*
23 *to Division 11 (commencing with Section 11101) of the Commercial*
24 *Code, once any of the following conditions are met:*

25 (1) *With respect to any business entity subject to tax under Part*
26 *12 (commencing with Section 27001), any installment payment of*
27 *estimated tax made pursuant to Section 19028 or the payment*
28 *made pursuant to Section 18612 with regard to an extension of*
29 *time to file exceeds twenty thousand dollars (\$20,000) in any*
30 *taxable year.*

31 (2) *With respect to any business entity subject to tax under Part*
32 *12 (commencing with Section 27001), the total tax liability exceeds*
33 *eighty thousand dollars (\$80,000) in any taxable year. For*
34 *purposes of this section, total tax liability shall be the total tax*
35 *liability as shown on the original return, after any adjustment*
36 *made pursuant to Section 19051.*

37 (3) *A taxpayer submits a request to the Franchise Tax Board*
38 *and is granted permission to make electronic funds transfers.*

39 (b) *A taxpayer required to remit payments to the Franchise Tax*
40 *Board by electronic funds transfer may elect to discontinue making*

1 *payments where the threshold requirements set forth in paragraphs*
2 *(1) and (2) of subdivision (a) were not met for the preceding*
3 *taxable year. The election shall be made in a form and manner*
4 *prescribed by the Franchise Tax Board.*

5 *(c) Any taxpayer required to remit payment by electronic funds*
6 *transfer pursuant to this section who makes payment by other*
7 *means shall pay a penalty of 10 percent of the amount paid, unless*
8 *it is shown that the failure to make payment as required was for*
9 *reasonable cause and was not the result of willful neglect.*

10 *(d) Any taxpayer required to remit payments by electronic funds*
11 *transfer pursuant to this section may request a waiver of those*
12 *requirements from the Franchise Tax Board. The Franchise Tax*
13 *Board may grant a waiver only if it determines that the particular*
14 *amounts paid in excess of the threshold amounts established in*
15 *this section were not representative of the taxpayer's tax liability.*
16 *If a taxpayer is granted a waiver, subsequent remittances by*
17 *electronic funds transfer shall be required only on those terms set*
18 *forth in the waiver.*

19 *(e) Electronic funds transfer procedures, in addition to those*
20 *described in subdivision (f), shall be as prescribed by the Franchise*
21 *Tax Board. Payment is deemed complete on the date the electronic*
22 *funds transfer is initiated, if settlement to the state's demand*
23 *account occurs on or before the banking day following the date*
24 *the transfer is initiated. If settlement to the state's demand account*
25 *does not occur on or before the banking day following the date*
26 *the transfer is initiated, payment is deemed to occur on the date*
27 *settlement occurs.*

28 *(f) For purposes of this section:*

29 *(1) "Electronic funds transfer" means any transfer of funds,*
30 *other than a transaction originated by check, draft, or similar*
31 *paper instrument, that is initiated through an electronic terminal,*
32 *telephonic instrument, or computer or magnetic tape, so as to*
33 *order, instruct, or authorize a financial institution to debit or credit*
34 *an account. Electronic funds transfer shall be accomplished by an*
35 *automated clearinghouse debit, automated clearinghouse credit,*
36 *a Federal Reserve Wire Transfer (Fedwire), or by an international*
37 *funds transfer.*

38 *(2) "Automated clearinghouse" means any federal reserve bank,*
39 *or an organization established by agreement with the National*
40 *Automated Clearing House Association, that operates as a*

1 *clearinghouse for transmitting or receiving entries between banks*
2 *or bank accounts and that authorizes an electronic transfer of*
3 *funds between those banks or bank accounts.*

4 (3) *“Automated clearinghouse debit” means a transaction in*
5 *which any department of the state, through its designated*
6 *depository bank, originates an automated clearinghouse*
7 *transaction debiting the taxpayer’s bank account and crediting*
8 *the state’s bank account for the amount of tax. Banking costs*
9 *incurred for the automated clearinghouse debit transaction by the*
10 *taxpayer shall be paid by the state.*

11 (4) *“Automated clearinghouse credit” means an automated*
12 *clearinghouse transaction in which the taxpayer, through its own*
13 *bank, originates an entry crediting the state’s bank account and*
14 *debiting its own bank account. Banking costs incurred by the state*
15 *for the automated clearinghouse credit transaction may be charged*
16 *to the taxpayer.*

17 (5) *“Fedwire” means any transaction originated by the taxpayer*
18 *and utilizing the national electronic payment system to transfer*
19 *funds through federal reserve banks, pursuant to which the*
20 *taxpayer debits its own bank account and credits the state’s bank*
21 *account. Electronic funds transfers may be made by Fedwire only*
22 *if prior approval is obtained from the Franchise Tax Board and*
23 *the taxpayer is unable, for reasonable cause, to make payments*
24 *pursuant to paragraph (3) or (4). Banking costs charged to the*
25 *taxpayer and to the state may be charged to the taxpayer.*

26 (6) *“International funds transfer” means any transaction*
27 *originated by the taxpayer and utilizing the international electronic*
28 *payment system to transfer funds, pursuant to which the taxpayer*
29 *debits its own bank account and credits the state’s bank account.*

30 (7) *In determining whether a payment or total tax liability*
31 *exceeds the amounts established in subdivision (a), the income of*
32 *all taxpayers whose income derived from, or attributable to,*
33 *sources within this state is required to be determined by a*
34 *combined report shall be aggregated and the total aggregate*
35 *amount shall be considered to be the income of a single taxpayer*
36 *for purposes of determining the payment or total tax liability of a*
37 *single taxpayer.*

38 SEC. 64. *Article 2.5 (commencing with Section 19028) is added*
39 *to Chapter 4 of Part 10.2 of Division 2 of the Revenue and Taxation*
40 *Code, to read:*

Article 2.5. Business Entities

19028. (a) For purposes of this article, in the case of a business entity subject to tax under Part 12 (commencing with Section 27001), the term “estimated tax” means the amount which the business entity estimates as the amount of the tax imposed by Part 12 (commencing with Section 27001).

(b) Estimated tax shall be paid in installments as follows:

If the estimated tax of this subdivision are first met—	The following percentages of the requirements shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year.....	25	25	25	25
After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year.....	—	33 ¹ / ₃	33 ¹ / ₃	33 ¹ / ₃
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year.....	—	—	50	50
After the last day of the 8th month and before the 1st day of the 12th month of the taxable year.....	—	—	—	100

SEC. 65. Section 19029 is added to the Revenue and Taxation Code, to read:

19029. If, after paying any installment of estimated tax required by of Section 19028, the taxpayer makes a new estimate, the amount of each remaining installment (if any) shall be the amount which would have been payable if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased (as the case may be) by the amount computed by dividing the amount specified in subdivision (a) by the number specified in subdivision (b).

(a) The difference between:

(1) The amount of estimated tax required to be paid before the date on which the new estimate is made, and

(2) The amount of estimated tax which would have been required to be paid before that date if the new estimate had been made when the first estimate was made.

(b) The number of installments remaining to be paid on or after the date on which the new estimate is made.

SEC. 66. Section 19030 is added to the Revenue and Taxation Code, to read:

19030. The application of this article to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Franchise Tax Board.

SEC. 67. Section 19041.5 of the Revenue and Taxation Code is amended to read:

19041.5. (a) Notwithstanding any other provision of this part, Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), the provisions of Section 6603 of the Internal Revenue Code, relating to deposits made to suspend the running of interest on potential underpayments, shall apply, except as otherwise provided. A deposit shall not be considered a payment of tax for purposes of filing a claim for refund pursuant to Section 19306, converting an administrative action to an action on a claim pursuant to Section 19335, or filing an action pursuant to Section 19384, until either of the following occurs:

(1) The taxpayer provides a written statement to the Franchise Tax Board specifying that the deposit shall be a payment of tax for purposes of Section 19306, 19335, or 19384.

(2) The deposit is used to pay a final tax liability.

(b) Section 6603(d) of the Internal Revenue Code is modified to substitute the phrase “notice of proposed deficiency assessment

1 under Article 3 of Chapter 4 of this part” for “30-day letter” in
2 each place that the phrase “30-day letter” appears.

3 (c) In the case of any amount held by the Franchise Tax Board
4 as a deposit in the nature of a cash bond pursuant to the provisions
5 of this section prior to the amendments made by the act adding
6 this subdivision, the date that the taxpayer identifies that amount
7 as a deposit made pursuant to this section, as amended by the act
8 adding this subdivision, shall be treated as the date that the amount
9 is deposited for purposes of this section, as amended by the act
10 adding this subdivision.

11 *SEC. 68. Section 19043 of the Revenue and Taxation Code is*
12 *amended to read:*

13 19043. (a) For purposes of this part, “deficiency” means the
14 amount by which the tax imposed by Part 10 (commencing with
15 Section 17001)~~or~~, Part 11 (commencing with Section 23001), *or*
16 *Part 12 (commencing with Section 27001)* exceeds the excess of—

17 (1) The sum of—

18 (A) The amount shown as the tax by the taxpayer on an original
19 or amended return, if an original or amended return was filed, plus

20 (B) The amounts previously assessed (or collected without
21 assessment) as a deficiency, over—

22 (2) The amount of rebates, as defined in paragraph (2) of
23 subdivision (b), made.

24 (b) For purposes of this section:

25 (1) The tax imposed by Part 10 (commencing with Section
26 17001)~~and~~, Part 11 (commencing with Section 23001), *and Part*
27 *12 (commencing with Section 27001)* and the tax shown on an
28 original or amended return shall both be determined without regard
29 to payments on account of estimated tax, and without regard to
30 the credit under Section 19002.

31 (2) “Rebate” means so much of an abatement, credit, refund,
32 or other repayment, as was made on the ground that the tax
33 imposed by Part 10 (commencing with Section 17001)~~or~~, Part 11
34 (commencing with Section 23001), *or Part 12 (commencing with*
35 *Section 27001)* was less than the excess of the amount specified
36 in paragraph (1) of subdivision (a) over the rebates previously
37 made.

38 *SEC. 69. Section 19043.5 of the Revenue and Taxation Code*
39 *is amended to read:*

1 19043.5. (a) (1) If the Franchise Tax Board determines that
2 the amount of a carryover disclosed by the taxpayer on an original
3 or amended return, including an amended return reporting federal
4 adjustments pursuant to Section 18622, is more than the amount
5 of the carryover disclosed by its own examination, it may mail a
6 notice or notices to the taxpayer of the proposed carryover
7 adjustment and the proposed adjusted carryover amount.

8 (2) For purposes of this section, “carryover” means the amount
9 of a credit, loss, deduction, or other item that is shown on an
10 original or amended return for carry forward to a subsequent
11 taxable year.

12 (b) Except as otherwise provided in this section, the provisions
13 of this article applicable to a proposed deficiency assessment shall
14 be applicable to a proposed adjusted carryover amount, including
15 protest and appeal rights as if that proposed adjusted carryover
16 amount were a proposed deficiency assessment.

17 (c) (1) A proposed adjusted carryover amount shall become a
18 final adjusted carryover amount under this section following a
19 determination of the board regarding that proposed adjusted
20 carryover amount that becomes final pursuant to the provisions of
21 Section 19048.

22 (2) A final adjusted carryover amount shall be binding and
23 conclusive with respect to the amount of that carryover for purposes
24 of Part 10 (commencing with Section 17001), this part, ~~and~~ Part
25 11 (commencing with Section 23001), *and Part 12 (commencing*
26 *with Section 27001)*, except in the following circumstances:

27 (A) In the event of fraud, malfeasance, or misrepresentation of
28 a material fact.

29 (B) Subject to any provision of the Revenue and Taxation Code
30 that expressly provides that effect be given to that provision
31 notwithstanding any other law or rule of law.

32 (C) Subject to any law that is, or becomes, operative with respect
33 to a taxable year affected by the final adjusted carryover amount.

34 (D) Subject to any final federal adjustment that is made with
35 respect to the taxpayer’s federal income tax liability for a taxable
36 year affected by the final adjusted carryover amount.

37 (E) In an action brought pursuant to provisions of Section 19382.

38 (d) (1) In any case where there is a final adjusted carryover
39 amount with respect to a carryover, the taxpayer shall report that

1 final adjusted carryover amount on an original or amended return
2 for any subsequent year.

3 (2) If a taxpayer fails to comply with paragraph (1), then any
4 adjustment required to make the amount of the carryover shown
5 on the return for any year consistent with the final adjusted
6 carryover amount shall be treated as arising out of a mathematical
7 error and assessed and collected under Section 19051.

8 (e) Except as provided in subdivision (c), this section shall not
9 affect the determination, issuance, assessment, collection, or
10 validity of a deficiency assessment under this part.

11 *SEC. 70. Section 19054 of the Revenue and Taxation Code is*
12 *amended to read:*

13 19054. (a) If on any return or claim for refund of taxes imposed
14 under Part 10 (commencing with Section 17001)—~~or~~, Part 11
15 (commencing with Section 23001), *or Part 12 (commencing with*
16 *27001)*, there is an overstatement of the credit for income tax
17 withheld, or of the amount paid as estimated income tax, the
18 amount so overstated which is allowed against the tax shown on
19 the return or which is allowed as a credit or refund may be assessed
20 by the Franchise Tax Board in the same manner as is provided by
21 Section 19051 in the case of a mathematical error appearing on
22 the return.

23 (b) No unpaid amount of estimated tax under Section 19025 or
24 19136 shall be assessed.

25 *SEC. 71. Section 19057 of the Revenue and Taxation Code is*
26 *amended to read:*

27 19057. (a) Except in the case of a false or fraudulent return
28 and except as otherwise expressly provided in this part, every
29 notice of a proposed deficiency assessment shall be mailed to the
30 taxpayer within four years after the return was filed. No deficiency
31 shall be assessed or collected with respect to the year for which
32 the return was filed unless the notice is mailed within the four-year
33 period or the period otherwise provided. For purposes of this
34 chapter, the term “return” means the return required to be filed by
35 the taxpayer and does not include a return of any person from
36 whom the taxpayer has received an item of income, gain, loss,
37 deduction, or credit.

38 (b) The running of the period of limitations provided in
39 subdivision (a) on mailing a notice of proposed deficiency
40 assessment shall, in a case under Title 11 of the United States

1 Code, be suspended for any period during which the Franchise
2 Tax Board is prohibited by reason of that case from mailing the
3 notice of proposed deficiency assessment and for 60 days
4 thereafter.

5 (c) Where, within the 60-day period ending on the day on which
6 the time prescribed in this section for the assessment of any tax
7 imposed under Part 10 (commencing with Section 17001)-~~or~~, Part
8 11 (commencing with Section 23001), *or Part 12 (commencing*
9 *with Section 27001)* for any taxable year would otherwise expire,
10 the Franchise Tax Board receives a written document, other than
11 an amended return or a report required by Section 18622, signed
12 by the taxpayer showing that the taxpayer owes an additional
13 amount of that tax for that taxable year, the period for the
14 assessment of an additional amount in excess of the amount shown
15 on either an original or amended return shall not expire before the
16 day 60 days after the day on which the Franchise Tax Board
17 receives that document.

18 (d) If a taxpayer determines in good faith that it is an exempt
19 organization and files a return as an exempt organization under
20 Section 23772, and if the taxpayer is thereafter held to be a taxable
21 organization for the taxable year for which the return is filed, that
22 return shall be deemed the return of the organization for the
23 purposes of this section.

24 *SEC. 72. Section 19061 of the Revenue and Taxation Code is*
25 *repealed.*

26 ~~19061. In case of a deficiency described in Sections 24945 and~~
27 ~~24946, and in Sections 1033(a)(2)(C) and 1033(a)(2)(D) of the~~
28 ~~Internal Revenue Code, the deficiency may be assessed at any time~~
29 ~~prior to the expiration of the time therein provided.~~

30 *SEC. 73. Section 19063 of the Revenue and Taxation Code is*
31 *amended to read:*

32 19063. (a) In the case of any tax imposed by Part 10
33 (commencing with Section 17001)-~~or~~, Part 11 (commencing with
34 Section 23001), *or Part 12 (commencing with Section 27001)* with
35 respect to any person, the period for assessing a deficiency
36 attributable to any partnership item of a federally registered
37 partnership shall not expire before the later of the following:

38 (1) The date which is five years after the date on which the
39 partnership return of the federally registered partnership for the

1 partnership taxable year in which the item arose was filed (or later,
2 if the date prescribed for filing the return).

3 (2) If the name or address of the person does not appear on the
4 partnership return, the date which is one year after the date on
5 which the information is furnished to the Franchise Tax Board in
6 the manner and at the place as it may prescribe.

7 (b) For purposes of this section, “partnership item” means both
8 of the following:

9 (1) Any item required to be taken into account for the
10 partnership taxable year under any provision of subchapter K of
11 Chapter 1 of Title 26 of the Internal Revenue Code to the extent
12 that regulations prescribed by the Franchise Tax Board provide
13 that for purposes of this part that item is more appropriately
14 determined at the partnership level than at the partner level.

15 (2) Any other item to the extent affected by an item described
16 in paragraph (1).

17 (c) The extensions referred to in subsection (c)(4) of Section
18 6501 of the Internal Revenue Code, insofar as they relate to
19 partnership items, may, with respect to any person, be consented
20 by either of the following:

21 (1) Except to the extent the Franchise Tax Board is otherwise
22 notified by the partnership, by a general partner of the partnership.

23 (2) By any person authorized to do so by the partnership in
24 writing.

25 (d) For purposes of this section, “federally registered
26 partnership” means, with respect to any partnership taxable year,
27 any partnership for which either of the following apply:

28 (1) Interests have been offered for sale at any time during that
29 taxable year or a prior taxable year in any offering required to be
30 registered with the Securities and Exchange Commission.

31 (2) At any time during that taxable year or a prior taxable year,
32 was subject to the annual reporting requirements of the Securities
33 and Exchange Commission which relate to the protection of
34 investors in the partnership.

35 *SEC. 74. Section 19066 of the Revenue and Taxation Code is*
36 *amended to read:*

37 19066. (a) For the purposes of Sections 19057, 19058, and
38 19065, a return of tax imposed under Part 10 (commencing with
39 Section 17001) ~~or~~, Part 11 (commencing with Section 23001), *or*
40 *Part 12 (commencing with Section 27001)*, except a return required

1 by Article 5 (commencing with Section 18661) of Chapter 2
2 (relating to withholding), filed before the last day prescribed by
3 law for filing (determined without regard to any extension of time
4 for filing the return), shall be considered as filed on that day. For
5 purposes of Section 19306, payment of any portion of the tax made
6 before the last day prescribed for the payment of the tax shall be
7 considered made on the last day.

8 (b) For purposes of this section, if a return required by Article
9 5 (commencing with Section 18661) of Chapter 2 (relating to
10 withholding) or a return of tax imposed by Section 13020 of the
11 Unemployment Insurance Code (relating to withholding tax on
12 wages), for any period ending with or within a calendar year is
13 filed before April 15 of the succeeding calendar year, that return
14 shall be considered filed on April 15 of that calendar year.

15 *SEC. 75. Section 19066.5 of the Revenue and Taxation Code*
16 *is amended to read:*

17 19066.5. In the case of any information that is required to be
18 reported to the Franchise Tax Board under Section 19141.2 or
19 19141.5, the time for assessment of any tax imposed by Part 10
20 (commencing with Section 17001), Part 11 (commencing with
21 Section 23001), *Part 12 (commencing with Section 27001)*, or this
22 part with respect to any event or period to which that information
23 relates shall not expire before the date that is four years after the
24 date on which the Franchise Tax Board is furnished the information
25 required to be reported under Section 19141.2 or 19141.5, or within
26 the periods provided in Section 19057, 19058, 19059, 19060,
27 19065, 24945, 24946, Section 1033(a)(2)(C) of the Internal
28 Revenue Code, or Section 1033(a)(2)(D) of the Internal Revenue
29 Code, whichever period expires later.

30 *SEC. 76. Section 19071 of the Revenue and Taxation Code is*
31 *amended to read:*

32 19071. The taxes imposed by Part 10 (commencing with
33 Section 17001) or Part 11 (commencing with Section 23001), *or*
34 *Part 12 (commencing with Section 27001)* upon any taxpayer other
35 than a transferee for which any person other than the taxpayer is
36 liable may be assessed against that person in the manner provided
37 for the assessment of deficiencies. The taxes may be assessed at
38 any time within which deficiency assessments may be made against
39 the taxpayer; provided, however, the running of the period of
40 limitations upon the assessment of the liability imposed upon any

1 person other than the taxpayer shall, after the mailing of the notice
2 provided for in Section 19033 to the taxpayer, be suspended for
3 the period during which the taxpayer exercises an administrative
4 remedy as provided in Section 19041, 19045, or 19048.

5 *SEC. 77. Section 19101 of the Revenue and Taxation Code is*
6 *amended to read:*

7 19101. (a) If any amount of tax imposed by Part 10
8 (commencing with Section 17001)-~~or~~, Part 11 (commencing with
9 Section 23001), *or Part 12 (commencing with Section 27001)*, is
10 not paid on or before the last date prescribed for payment, interest
11 on that amount at the adjusted annual rate established under Section
12 19521 shall be paid for the period from that last date to the date
13 paid.

14 (b) For purposes of this article, the last date prescribed for
15 payment of the tax shall be determined under Chapter 4
16 (commencing with Section 19001), with the application of the
17 following rules:

18 (1) The last date prescribed for payment shall be determined
19 without regard to any extension of time for payment or any
20 installment agreement entered into under Section 19008.

21 (2) The last date prescribed for payment shall be determined
22 without regard to any notice and demand for payment issued, by
23 reason of jeopardy as provided in Article 5 (commencing with
24 Section 19081), prior to the last date otherwise prescribed for that
25 payment.

26 (3) In all other cases in which the last date for payment is not
27 otherwise prescribed, the last date for payment shall be deemed
28 to be the date the liability for tax arises (and in no event shall be
29 later than the date notice and demand for the tax is made by the
30 Franchise Tax Board).

31 (c) Except as provided in this article:

32 (1) Interest prescribed under this article on any tax shall be paid
33 upon notice and demand, and shall be assessed, collected, and paid
34 in the same manner as taxes. Any reference in Part 10 (commencing
35 with Section 17001), Part 11 (commencing with Section 23001),
36 *Part 12 (commencing with Section 27001)*, or this part (except
37 Article 3 (commencing with Section 19031), relating to deficiency
38 assessments) to any tax imposed by Part 10 (commencing with
39 Section 17001)-~~or~~, Part 11 (commencing with Section 23001), *or*

1 *Part 12 (commencing with Section 27001)* shall be deemed also
2 to refer to interest imposed by this article on that tax.

3 (2) (A) Interest shall be imposed under subdivision (a) in respect
4 to any assessable penalty, additional amount, or addition to the tax
5 (other than an addition to tax imposed under Section 19131, 19132,
6 or 19164) only if that assessable penalty, additional amount, or
7 addition to the tax is not paid within 15 calendar days from the
8 date of notice and demand therefor, and in that case interest shall
9 be imposed only for the period from the date of the notice and
10 demand to the date of payment.

11 (B) Interest shall be imposed under this article with respect to
12 any addition to tax imposed by Section 19131 (relating to failure
13 to file a return on or before the due date), Section 19132 (relating
14 to underpayment of tax), or Section 19164 (relating to imposition
15 of the accuracy-related penalty), for the period that:

16 (i) Begins on the date on which the return of the tax with respect
17 to which that addition to tax is imposed is required to be filed
18 (including any extensions), and

19 (ii) Ends on the date of payment of that addition to tax.

20 (3) If notice and demand is made for payment of any amount
21 and if that amount is paid within 15 calendar days after the date
22 of the notice and demand, interest under this article on the amount
23 so paid shall not be imposed for the period after the date of the
24 notice and demand.

25 (d) This article shall not apply to any failure to pay estimated
26 tax required by Section 19025 or 19136.

27 *SEC. 78. Section 19132 of the Revenue and Taxation Code is*
28 *amended to read:*

29 19132. (a) (1) Unless it is shown that the failure is due to
30 reasonable cause and not due to willful neglect, a penalty computed
31 in accordance with paragraph (2) is hereby imposed in the case of
32 failure to pay any of the following:

33 (A) The amount shown as tax on any return on or before the
34 date prescribed for payment of that tax determined with regard to
35 any extension of time for payment.

36 (B) Any amount in respect of any tax required to be shown on
37 a return which is not so shown including an assessment made
38 pursuant to Section 19051 within 15 days of the date of the notice
39 and demand therefor.

1 (C) The amount required to be paid by Section 19021, if
2 applicable, that is not paid.

3 ~~(D) The amount required to be paid by Section 17941 or 23091,~~
4 ~~if applicable, that is not paid.~~

5 ~~(E) The amount required to be paid by Section 17948 or 23097,~~
6 ~~if applicable, that is not paid.~~

7 (2) The penalty imposed under paragraph (1) shall consist of
8 both of the following:

9 (A) Five percent of the total tax unpaid as defined in subdivision
10 (c).

11 (B) An amount computed at the rate of 0.5 percent per month
12 of the “remaining tax” as defined in subdivision (d) for each
13 additional month or fraction thereof not to exceed 40 months during
14 which the “remaining tax” is greater than zero.

15 (3) The aggregate amount of penalty imposed by this subdivision
16 shall not exceed 25 percent of the total unpaid tax and shall be due
17 and payable upon notice and demand by the Franchise Tax Board.
18 The tender of a check or money order does not constitute payment
19 of the tax for purposes of this section unless the check or money
20 order is paid on presentment.

21 (b) The penalty prescribed by subdivision (a) shall not be
22 assessed if, for the same taxable year, the sum of any penalties
23 imposed under Section 19131 relating to failure to file return and
24 Section 19133 relating to failure to file return after demand is equal
25 to or greater than the subdivision (a) penalty. In the event the
26 penalty imposed under subdivision (a) is greater than the sum of
27 any penalties imposed under Sections 19131 and 19133, the penalty
28 imposed under subdivision (a) shall be the amount which exceeds
29 the sum of any penalties imposed under Sections 19131 and 19133.

30 (c) For purposes of this section, total tax unpaid means the
31 amount of tax shown on the return reduced by both of the
32 following:

33 (1) The amount of any part of the tax which is paid on or before
34 the date prescribed for payment of the tax.

35 (2) The amount of any credit against the tax which may be
36 claimed upon the return.

37 (d) For purposes of this section, “remaining tax” means total
38 tax unpaid reduced by the amount of any payment of the tax.

(e) If the amount required to be shown as a tax on a return is less than the amount shown as tax on that return, subdivisions (a), (c), and (d) shall be applied by substituting that lower amount.

(f) No interest shall accrue on the portion of the penalty prescribed in subparagraph (B) of paragraph (2) of subdivision (a).

(g) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.

SEC. 79. Section 19135.5 is added to the Revenue and Taxation Code, to read:

19135.5. *If a foreign limited liability business entity that fails to qualify to do business in this state or whose powers, rights, and privileges have been forfeited, or any domestic limited liability business entity which has been suspended, and that is doing business in this state, within the meaning of Section 27101, fails to make and file a return as required by this part, the Franchise Tax Board shall impose a penalty of two thousand dollars (\$2,000) per taxable year, unless the failure to file is due to reasonable cause and not willful neglect. The penalty shall be in addition to any other penalty that may be due under this part. The penalty shall be imposed if the return is not filed within 60 days after the Franchise Tax Board sends the taxpayer a notice and demand to file the required return.*

SEC. 80. Section 19139 is added to the Revenue and Taxation Code, to read:

19139. (a) (1) *A taxpayer subject to the tax imposed under Part 12 (commencing with Section 27001) with an understatement of tax in excess of one million dollars (\$1,000,000) for any taxable year shall be subject to the penalty imposed under this section.*

(2) *For taxpayers included in a combined report under Section 28101 or authorized to be included in a combined report under Section 28101.5, the threshold amount prescribed in paragraph (1) shall apply to the aggregate amount of tax liability under Part 12 (commencing with Section 27001) for all taxpayers that are required to be or authorized to be included in a combined report.*

(b) *The penalty under this section shall be an amount equal to 20 percent of any understatement of tax. For purposes of this section, "understatement of tax" means the amount by which the tax imposed by Part 12 (commencing with Section 27001) exceeds the amount of tax shown on an original return or shown on an*

1 amended return filed on or before the original or extended due
2 date of the return for the taxable year.

3 (c) The penalty imposed by this section shall be in addition to
4 any other penalty imposed under Part 12 (commencing with Section
5 27001) or this part.

6 (d) Article 3 (commencing with Section 19031), relating to
7 deficiency assessments, shall not apply with respect to the
8 assessment or collection of any penalty imposed by subdivision
9 (a).

10 (e) A refund or credit for any amounts paid to satisfy a penalty
11 imposed under this section may be allowed only on the grounds
12 that the amount of the penalty was not properly computed by the
13 Franchise Tax Board.

14 (f) (1) No penalty shall be imposed under this section on any
15 understatement to the extent that the understatement is attributable
16 to a change in law that is enacted, promulgated, issued, or becomes
17 final after the earlier of either of the following dates:

18 (A) The date the taxpayer files the return for the taxable year
19 for which the change is operative.

20 (B) The extended due date for the return of the taxpayer for the
21 taxable year for which the change is operative.

22 (2) For purposes of this subdivision, a “change of law” means
23 a statutory change or an interpretation of law or rule of law by
24 regulation, legal ruling of counsel, within the meaning of
25 subdivision (b) of Section 11340.9 of the Government Code, or a
26 published federal or California court decision.

27 (3) The Franchise Tax Board shall implement this subdivision
28 in a reasonable manner.

29 (g) No penalty shall be imposed under this section to the extent
30 that a taxpayer’s understatement is attributable to the taxpayer’s
31 reasonable reliance on written advice of the Franchise Tax Board,
32 but only if the written advice was a legal ruling by the Chief
33 Counsel, within the meaning of paragraph (1) of subdivision (a)
34 of Section 21012.

35 SEC. 81. Section 19141.5 of the Revenue and Taxation Code
36 is amended to read:

37 19141.5. (a) (1) Section 6038A of the Internal Revenue Code,
38 relating to information with respect to certain foreign-owned
39 corporations, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038A of the Internal Revenue Code.

(3) Section 11314 of Public Law 101-508, relating to application of amendments made by Section 7403 of the Revenue Reconciliation Act of 1989 to taxable years beginning on or before July 10, 1989, shall apply.

(4) Section 6038A(e) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to “summons” shall instead refer to “subpoena duces tecum.”

(C) Section 6038A(e)(4)(C) of the Internal Revenue Code shall refer to “superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco,” instead of “United States district court for the district in which the person (to whom the summons is issued) resides or is found.”

(b) In the case of a corporation, each of the following shall apply:

(1) Section 6038B of the Internal Revenue Code, relating to notice of certain transfers to foreign persons, shall apply, except as otherwise provided.

(2) The information required to be filed with the Franchise Tax Board under this subdivision shall be a copy of the information required to be filed with the Internal Revenue Service.

(3) (A) A penalty shall be imposed under this part for failure to furnish information and that penalty shall be determined in accordance with Section 6038B of the Internal Revenue Code, except as otherwise provided.

(B) Subparagraph (A) shall not apply to any transfer described in Section 6038B(a)(1)(B) of the Internal Revenue Code.

(c) (1) Section 6038C of the Internal Revenue Code, relating to information with respect to foreign corporations engaged in United States business, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be

determined in accordance with Section 6038C of the Internal Revenue Code.

(3) Section 6038C(d) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to “summons” shall instead refer to “subpoena duces tecum.”

(d) For purposes of this part, the information required to be filed with the Franchise Tax Board pursuant to this section shall be a copy of the information filed with the Internal Revenue Service.

(e) For purposes of this section, each of the following shall apply:

(1) Section 7701(a)(4) of the Internal Revenue Code, relating to the term “domestic,” shall apply.

(2) Section 7701(a)(5) of the Internal Revenue Code, relating to the term “foreign,” shall apply.

(3) Section 7701(a)(30) of the Internal Revenue Code, relating to the term “United States person,” shall apply. However, the term “United States person” shall not include any ~~corporation~~ *business entity* that is not subject to the tax imposed under ~~Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501),~~ *of Part 12 (commencing with Section 27001).*

SEC. 82. Section 19141.8 is added to the Revenue and Taxation Code, to read:

19141.8. (a) Each taxpayer subject to tax under Part 12 (commencing with Section 27001) shall maintain (in the location, in the manner, and to the extent prescribed in regulations promulgated by the Franchise Tax Board) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the net receipts derived from or attributable to this state.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors.

1 (4) Documents and information, including any questionnaires
2 completed and submitted to the Internal Revenue Service, that are
3 necessary to audit issues involving the determination of income
4 subject to tax by this state.

5 (b) For purposes of this section:

6 (1) Information for any year shall be retained for that period
7 of time in which the taxpayers' business net receipts tax liability
8 to this state may be subject to adjustment, including all periods in
9 which additional taxes may be assessed, not to exceed eight years
10 from the due date or extended due date of the return, or during
11 which a protest is pending before the Franchise Tax Board, or an
12 appeal is pending before the State Board of Equalization, or a
13 lawsuit is pending in the courts of this state or the United States
14 with respect to California business net receipts tax.

15 (2) "Related party" means entities that are related because one
16 owns or controls, directly or indirectly, more than 50 percent of
17 the stock of the other or because more than 50 percent of the voting
18 stock of each is owned or controlled, directly or indirectly, by the
19 same interests.

20 (3) "Records" includes any books, papers, or other data.

21 (c) (1) If a taxpayer subject to this section fails to maintain or
22 fails to cause another to maintain records as required by
23 subdivision (a), that taxpayer shall pay a penalty of ten thousand
24 dollars (\$10,000) for each taxable year with respect to which the
25 failure occurs.

26 (2) If any failure described in paragraph (1) continues for more
27 than 90 days after the day on which the Franchise Tax Board mails
28 notice of the failure to the taxpayer, that taxpayer shall pay a
29 penalty (in addition to the amount required under paragraph (1))
30 of ten thousand dollars (\$10,000) for each 30-day period (or
31 fraction thereof) during which the failure continues after the
32 expiration of the 90-day period. The additional penalty imposed
33 by this subdivision shall not exceed a maximum of fifty thousand
34 dollars (\$50,000) if the failure to maintain or the failure to cause
35 another to maintain is not willful.

36 (3) For purposes of this section, the time prescribed by
37 regulations to maintain records (and the beginning of the 90-day
38 period after notice by the Franchise Tax Board) shall be treated
39 as not earlier than the last day on which (as shown to the

1 *satisfaction of the Franchise Tax Board) reasonable cause existed*
2 *for failure to maintain the records.*

3 *(d) (1) The Franchise Tax Board may apply the rules of*
4 *paragraph (2) whether or not the board begins a proceeding to*
5 *enforce a subpoena, or subpoena duces tecum, if subparagraphs*
6 *(A), (B), and (C) apply:*

7 *(A) For purposes of determining the correct treatment under*
8 *Part 12 (commencing with Section 27001) of the items described*
9 *in subdivision (a), the Franchise Tax Board issues a subpoena or*
10 *subpoena duces tecum to a taxpayer to produce (either directly or*
11 *as agent for the related party) any records or testimony.*

12 *(B) The subpoena or subpoena duces tecum is not quashed in*
13 *a proceeding begun under paragraph (3) and is not determined*
14 *to be invalid in a proceeding begun under Section 19504 to enforce*
15 *the subpoena or subpoena duces tecum.*

16 *(C) The taxpayer does not substantially comply in a timely*
17 *manner with the subpoena or subpoena duces tecum and the*
18 *Franchise Tax Board has sent by certified or registered mail a*
19 *notice to that taxpayer that it has not substantially complied.*

20 *(D) If the taxpayer fails to maintain or fails to cause another*
21 *to maintain records as required by subdivision (a), and by reason*
22 *of that failure, the subpoena, or subpoena duces tecum, is quashed*
23 *in a proceeding described in subparagraph (B) or the taxpayer is*
24 *not able to provide the records requested in the subpoena or*
25 *subpoena duces tecum, the Franchise Tax Board may apply the*
26 *rules of paragraph (2) to any of the items described in subdivision*
27 *(a) to which the records relate.*

28 *(2) (A) All of the following shall be determined by the Franchise*
29 *Tax Board in the Franchise Tax Board's sole discretion from the*
30 *Franchise Tax Board's own knowledge or from information the*
31 *Franchise Tax Board may obtain through testimony or otherwise:*

32 *(i) The components that are a part of one or more unitary*
33 *businesses for purposes of determining the business net receipts*
34 *derived from or attributable to this state pursuant to Chapter 7*
35 *(commencing with Section 28101) of Part 12.*

36 *(ii) Amounts that are attributable to the classification of an item*
37 *as business or nonbusiness for purposes of Chapter 3 (commencing*
38 *with Section 27501) of Part 12.*

39 *(iii) The apportionment factors for purposes of Chapter 7*
40 *(commencing with Section 28001) of Part 12.*

1 (iv) *The correct amount of income under Section 882 of, or*
2 *Subpart F of Part III of Subchapter N of, or similar provisions of,*
3 *the Internal Revenue Code.*

4 (B) *This paragraph shall apply to determine the correct*
5 *treatment of the items described in subdivision (a) unless the*
6 *taxpayer is authorized by its related parties (in the manner and at*
7 *the time as the Franchise Tax Board shall prescribe) to act as the*
8 *related parties' limited agent solely for purposes of applying*
9 *Section 19504 with respect to any request by the Franchise Tax*
10 *Board to examine records or produce testimony related to any*
11 *item described in subdivision (a) or with respect to any subpoena*
12 *or subpoena duces tecum for the records or testimony. The*
13 *appearance of persons or the production of records by reason of*
14 *the taxpayer being an agent shall not subject those persons or*
15 *records to legal process for any purpose other than determining*
16 *the correct treatment under Part 12 of the items described in*
17 *subdivision (a).*

18 (C) *Determinations made in the sole discretion of the Franchise*
19 *Tax Board pursuant to this paragraph may be appealed to the*
20 *State Board of Equalization, in the manner and at the time*
21 *prescribed by Section 19045 or 19324, or may be the subject of*
22 *an action to recover tax, in the manner and at a time prescribed*
23 *by Section 19382. The review of determinations by the board or*
24 *the court shall be limited to whether the determinations were*
25 *arbitrary or capricious, or are not supported by substantial*
26 *evidence.*

27 (3) (A) *Notwithstanding any other law or rule of law, any*
28 *reporting taxpayer to which the Franchise Tax Board issues a*
29 *subpoena or subpoena duces tecum referred to in subparagraph*
30 *(A) of paragraph (1) shall have the right to begin a proceeding to*
31 *quash the subpoena or subpoena duces tecum not later than the*
32 *90th day after the subpoena or subpoena duces tecum was issued.*
33 *In that proceeding, the Franchise Tax Board may seek to compel*
34 *compliance with the subpoena or subpoena duces tecum.*

35 (B) *Notwithstanding any other law or rule of law, any reporting*
36 *taxpayer that has been notified by the Franchise Tax Board that*
37 *it has determined that the taxpayer has not substantially complied*
38 *with a subpoena or subpoena duces tecum referred to in paragraph*
39 *(1) shall have the right to begin a proceeding to review the*
40 *determination not later than the 90th day after the day on which*

1 the notice referred to in subparagraph (C) of paragraph (1) was
2 mailed. If the proceeding is not begun on or before the 90th day,
3 the determination by the Franchise Tax Board shall be binding
4 and shall not be reviewed by any court.

5 (C) The superior courts of the State of California for the
6 Counties of Los Angeles, Sacramento, and San Diego, and for the
7 City and County of San Francisco, shall have jurisdiction to hear
8 any proceeding brought under subparagraphs (A) and (B). Any
9 order or other determination in the proceeding shall be treated as
10 a final order that may be appealed.

11 (D) If any taxpayer takes any action as provided in
12 subparagraphs (A) and (B), the running of any period of limitations
13 under Sections 19057 to 19064, inclusive (relating to the
14 assessment and collection of tax), or under Section 19704 (relating
15 to criminal prosecutions) with respect to that taxpayer, that
16 taxpayer shall be suspended for the period during which the
17 proceedings, and appeals therein, are pending. In no event shall
18 any period expire before the 90th day after the day on which there
19 is a final determination in the proceeding.

20 SEC. 83. Section 19142 of the Revenue and Taxation Code is
21 amended to read:

22 19142. (a) Except as provided in Sections 19147 and 19148
23 and subdivision (b), in the case of any underpayment of tax
24 imposed under Part 11 (commencing with Section 23001) or Part
25 12 (commencing with Section 27001), there shall be added to the
26 tax for the taxable year an amount determined at the rate established
27 under Section 19521 on the amount of the underpayment for the
28 period of the underpayment.

29 (b) (1) No addition to tax shall be imposed under this section
30 to the extent that the underpayment was created or increased by
31 any provision of law that is chaptered during and operative for the
32 taxable year of the underpayment.

33 (2) Notwithstanding Section 18415, this subdivision applies to
34 penalties imposed on and after January 1, 2005.

35 SEC. 84. Section 19144 of the Revenue and Taxation Code is
36 amended to read:

37 19144. For the purposes of Section 19142 the amount of the
38 underpayment shall be the excess of—

39 (a) ~~(1)~~ The amount of the installment which would be required
40 to be paid if the estimated tax were equal to the applicable

percentage of the tax shown on the return for the taxable year, ~~or~~
(2) ~~in the case of the tax imposed by Article 3 (commencing with~~
~~Section 23181) of Chapter 2 of Part 11 an amount equal to the~~
~~applicable percentage of the lesser of the tax computed at the rate~~
~~provided by Section 19024 (but otherwise on the basis of the facts~~
~~shown on the return and the law applicable to the taxable year),~~
~~or the tax shown on the return for the taxable year as prescribed~~
~~by Section 19021, or (3) if no return was filed, the applicable~~
percentage of the tax for that year, over

(b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) For purposes of this section, the “applicable percentage” shall be as follows:

(1) ~~For taxable years beginning before January 1, 1998, 95 percent.~~

(2) ~~For taxable years beginning on or after January 1, 1998, 100 percent.~~

SEC. 85. Section 19145 of the Revenue and Taxation Code is amended to read:

19145. For purposes of Section 19142, the period of the underpayment shall run from the date the installment was required to be made to whichever of the following dates is the earlier:

(a) The 15th day of the third month following the close of the taxable year, ~~except in the case of an organization described in~~
~~Section 23731 subject to the tax imposed under Section 23731, in~~
~~which case “fifth” shall be substituted for “third.”~~

(b) With respect to any portion of the underpayment, the date on which that portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision (a) of Section 19144 for the installment date.

SEC. 86. Section 19147 of the Revenue and Taxation Code is amended to read:

19147. (a) Notwithstanding Sections 19142 to 19145, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax paid on or before the last date prescribed for the payment of the installment equals or exceeds the amount

which would have been required to be paid on or before that date if the estimated tax were whichever of the following is the lesser:

(1) (A) The tax shown on the return of the taxpayer for the preceding taxable year if a return showing a liability for tax was filed by the taxpayer for the preceding year and that preceding year was a year of 12 months. ~~The tax shown on the return, in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, means the amount of tax shown on the return for the taxable year as prescribed in Section 19021.~~

(B) In the case of a large corporation, subparagraph (A) shall not apply, except as provided in clauses (i) and (ii).

(i) Subparagraph (A) shall apply for purposes of determining the amount of the first required installment for any taxable year.

(ii) Any reduction in the first required installment by reason of clause (i) shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(2) (A) An amount equal to the applicable percentage specified in Section 19144 of the tax for the taxable year computed by placing on an annualized basis the ~~taxable income~~ *business net receipts*:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month.

(ii) For the first three months of the taxable year, in the case of the installment required to be paid in the sixth month.

(iii) For the first six months of the taxable year, in the case of the installment required to be paid in the ninth month.

(iv) For the first nine months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) (i) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (i) of subparagraph (A) shall be applied by substituting “two months” for “three months.”

(II) Clause (ii) of subparagraph (A) shall be applied by substituting “four months” for “three months.”

(III) Clause (iii) of subparagraph (A) shall be applied by substituting “seven months” for “six months.”

(IV) Clause (iv) of subparagraph (A) shall be applied by substituting “ten months” for “nine months.”

(ii) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (ii) of subparagraph (A) shall be applied by substituting “five months” for “three months.”

(II) Clause (iii) of subparagraph (A) shall be applied by substituting “eight months” for “six months.”

(III) Clause (iv) of subparagraph (A) shall be applied by substituting “eleven months” for “nine months.”

(iii) An election under clause (i) or (ii) shall apply to the taxable year for which the election is made and shall be effective only if the election is made on or before the date required for the payment of the first required installment for that taxable year.

(iv) This subparagraph shall apply to taxable years beginning on or after January 1, 1997.

(C) For purposes of this paragraph, the taxable income shall be placed on an annualized basis in the following manner:

(i) Multiply by 12 the taxable income referred to in subparagraph (A).

(ii) Divide the resulting amount by the number of months in the taxable year referred to in subparagraph (A).

~~“Taxable income”~~

~~“Business net receipts” as used in this paragraph means “net income” includable in the measure of tax or “alternative minimum taxable income” (as defined by Section 23455) “business net receipts” subject to tax under Part 12 (commencing with Section 27001).~~

(D) In the case of any corporation which is subject to the tax imposed under Section 23731, any reference to taxable income shall be treated as including a reference to unrelated business taxable income and, except in the case of an election under subparagraph (B), each of the following shall apply:

(i) Clause (i) of subparagraph (A) shall be applied by substituting “two months” for “three months.”

(ii) Clause (ii) of subparagraph (A) shall be applied by substituting “four months” for “three months.”

(iii) Clause (iii) of subparagraph (A) shall be applied by substituting “seven months” for “six months.”

(iv) Clause (iv) of subparagraph (A) shall be applied by substituting “ten months” for “nine months.”

(3) The applicable percentage specified in Section 19144 or more of the tax for the taxable year was paid by withholding of tax pursuant to Section 18662.

(4) The applicable percentage specified in Section 19144 or more of the ~~net income~~ *business net receipts* for the taxable year consists of items from which an amount was withheld pursuant to Section 18662, the amount of the first installment under Section 19025 equals at least the minimum franchise tax specified in Section 23153, and the amount of any installment under Section 19025 includes an amount equal to the applicable tax under Section 23800.5.

(b) (1) For purposes of this section, “large corporation” means any corporation if that corporation (or any predecessor corporation) had taxable income (computed without regard to net operating loss deductions) of one million dollars (\$1,000,000) or more for any taxable year during the testing period.

(2) For purposes of this subdivision, “testing period” means the three taxable years immediately preceding the taxable year involved.

(c) (1) Any dividend received from a closely held real estate investment trust by any person that owns (after application of Sections 856(d)(5) and 856(l)(3)(B) of the Internal Revenue Code) 10 percent or more (by vote or value) of the stock or beneficial interests in the trust shall be taken into account in computing annualized income installments under paragraph (2) of subdivision (a) in a manner similar to the manner under which partnership income inclusions are taken into account.

(2) For purposes of paragraph (1), the term “closely held real estate investment trust” means a real estate investment trust with respect to which five or fewer persons own (after application of Sections 856(d)(5) and 856(l)(3)(B) of the Internal Revenue Code) 50 percent or more (by vote or value) of the stock or beneficial interests in the trust.

~~(3) The amendments made to this section by the act adding this subdivision shall apply to estimated tax payments due on or after January 1, 2001.~~

SEC. 87. Section 19149 of the Revenue and Taxation Code is repealed.

~~19149. (a) Notwithstanding any other provision of Sections 19142 to 19151, inclusive, if the amount of estimated tax due and~~

~~payable under Section 19025 is only the minimum franchise tax imposed by Section 23153 and, if applicable, the tax of a wholly owned subsidiary under Section 23800.5, then the addition to the tax with respect to any underpayment of any installment imposed by Section 19142 shall be calculated only on the basis of the amount of the minimum franchise tax and the amount of the tax of each wholly owned subsidiary.~~

~~(b) This section shall not apply to a large corporation as defined in subdivision (b) of Section 19147.~~

SEC. 88. *Section 19164 of the Revenue and Taxation Code is amended to read:*

19164. (a) (1) (A) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty on underpayments, as amended by Section 1409(b) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), except as otherwise provided.

(B) (i) Except for understatements relating to reportable transactions to which Section 19164.5 applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting “40 percent” for “20 percent.”

(ii) Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990, and before January 1, 2013.

1 (B) Any other taxable year for which an assessment is made
2 after July 16, 1991.

3 (C) For purposes of this section, references in Section 6662(e)
4 of the Internal Revenue Code and the regulations thereunder,
5 relating to treatment of an affiliated group that files a consolidated
6 federal return, are modified to apply to those entities required to
7 be included in a combined report under Section 25101 or 25110.
8 For these purposes, entities included in a combined report pursuant
9 to paragraph (4) or (6) of subdivision (a) of Section 25110 shall
10 be considered only to the extent required to be included in the
11 combined report.

12 (3) *With respect to business entities subject to tax under Part*
13 *12 (commencing with Section 27001), this subdivision shall apply*
14 *to taxable years beginning on or after January 1, 2013.*

15 ~~(3)~~

16 (4) Section 6662(d)(1)(B) of the Internal Revenue Code is
17 modified to provide that in the case of a ~~corporation, other than~~
18 ~~an “S” corporation,~~ *taxpayer subject to tax under Part 12*
19 *(commencing with Section 27001), there is a substantial*
20 *understatement of tax for any taxable year if the amount of the*
21 *understatement for the taxable year exceeds the lesser of:*

22 (A) Ten percent of the tax required to be shown on the return
23 for the taxable year (or, if greater, two thousand five hundred
24 dollars (\$2,500)).

25 (B) Five million dollars (\$5,000,000).

26 (4) Section 6662(d)(2)(A) of the Internal Revenue Code is
27 modified to additionally provide that the excess determined under
28 Section 6662(d)(2)(A) of the Internal Revenue Code shall be
29 determined without regard to items to which Section 19164.5
30 applies and without regard to items with respect to which a penalty
31 is imposed by Section 19774.

32 (5) The provisions of Sections 6662(e)(1) and 6662(h)(2) of the
33 Internal Revenue Code shall apply to returns filed on or after
34 January 1, 2010.

35 (b) For purposes of Section 6662(d) of the Internal Revenue
36 Code, Section 6664 of the Internal Revenue Code, Section
37 6694(a)(1) of the Internal Revenue Code, and this part, the
38 Franchise Tax Board may prescribe a list of positions for which
39 the Franchise Tax Board believes there is not substantial authority
40 or there is no reasonable belief that the tax treatment is more likely

1 than not the proper tax treatment. That list (and any revisions
2 thereof) shall be published through the use of Franchise Tax Board
3 Notices or other published positions. In addition, the “listed
4 transactions” identified and published pursuant to the preceding
5 sentence shall be published on the Web site of the Franchise Tax
6 Board.

7 (c) A fraud penalty shall be imposed under this part and shall
8 be determined in accordance with Section 6663 of the Internal
9 Revenue Code, relating to imposition of fraud penalty, except as
10 otherwise provided.

11 (d) (1) Section 6664 of the Internal Revenue Code, relating to
12 definitions and special rules, shall apply, except as otherwise
13 provided.

14 (2) Section 6664(c)(3) of the Internal Revenue Code shall apply
15 to returns filed on or after January 1, 2010.

16 (3) Section 6664(c)(4) of the Internal Revenue Code shall apply
17 to appraisals prepared with respect to returns or submissions filed
18 on or after January 1, 2010.

19 (e) Except for purposes of subdivision (e) of Section 19774,
20 Section 6662(b)(6) of the Internal Revenue Code shall not apply.

21 (f) Except for purposes of subdivision (e) of Section 19774,
22 Section 6662(i) of the Internal Revenue Code, relating to increase
23 in penalty in case of nondisclosed noneconomic substance
24 transactions, shall not apply.

25 (g) Section 6665 of the Internal Revenue Code, relating to
26 applicable rules, shall apply, except as otherwise provided.

27 (h) The amendments made to this section by the act adding this
28 subdivision shall apply to notices mailed on or after January 1,
29 2012.

30 *SEC. 89. Section 19164.1 of the Revenue and Taxation Code*
31 *is repealed.*

32 ~~19164.1.—(a) Any understatement determined pursuant to~~
33 ~~subdivision (a) of Section 19164 (relating to the accuracy-related~~
34 ~~penalty) may not include amounts that are attributable to the credit~~
35 ~~allowed under Section 17052.2 (relating to the teacher retention~~
36 ~~tax credit).~~

37 ~~(b) This section applies only to tax credits claimed under Section~~
38 ~~17052.2 for taxable years beginning on or after January 1, 2000,~~
39 ~~and before January 1, 2001.~~

1 *SEC. 90. Section 19164.5 of the Revenue and Taxation Code*
2 *is amended to read:*

3 19164.5. (a) A reportable transaction accuracy-related penalty
4 shall be imposed under this part and shall be determined in
5 accordance with Section 6662A of the Internal Revenue Code,
6 relating to the imposition of an accuracy-related penalty on
7 understatements with respect to reportable transactions, except as
8 otherwise provided.

9 (b) (1) The reportable transaction understatement, as determined
10 under Section 6662A(b) of the Internal Revenue Code, is modified
11 to not include amounts to which the penalty of Section 19774 is
12 imposed.

13 (2) Section 6662A(b)(1)(A)(ii) of the Internal Revenue Code
14 is modified to substitute the phrase “Sections 17041, 23151, 23181,
15 or 23501” for “section 1 (section 11 in the case of a taxpayer which
16 is a corporation).”

17 (3) Section 6662A(b)(1)(B) of the Internal Revenue Code is
18 modified to substitute the phrase “Part 10 (commencing with
19 Section 17001) ~~or~~, Part 11 (commencing with Section 23001), *or*
20 *Part 12 (commencing with Section 27001)*” for “subtitle A.”

21 (4) Section 6662A(b)(2)(B) of the Internal Revenue Code is
22 modified to substitute the phrase “income or ~~franchise business~~
23 *net receipts* tax” for “Federal income tax.”

24 (5) Section 6662A(e)(1) of the Internal Revenue Code is
25 modified to additionally provide that the amount of the
26 understatement is increased by noneconomic transaction
27 understatements, as defined in Section 19774.

28 (c) Section 6662A(e)(2) of the Internal Revenue Code is
29 modified to additionally provide that Section 6662A of the Internal
30 Revenue Code does not apply to amounts to which a penalty is
31 imposed under Section 19774.

32 (d) The provisions of subdivision (f) of Section 19772, relating
33 to the rescission of the penalty by the Chief Counsel, shall apply
34 to any penalty imposed by this section.

35 *SEC. 91. Section 19169 of the Revenue and Taxation Code is*
36 *amended to read:*

37 19169. (a) In addition to the criminal penalty provided by
38 Section 19712, any tax preparer who endorses or otherwise
39 negotiates (directly or through an agent) any warrant made in
40 respect of the taxes imposed by Part 10 (commencing with Section

1 17001)-~~or~~, Part 11 (commencing with Section 23001), *or Part 12*
2 *(commencing with Section 27001)* which is issued to a taxpayer
3 (other than the tax preparer) shall pay a penalty of two hundred
4 fifty dollars (\$250) with respect to each warrant. The preceding
5 sentence shall not apply with respect to the deposit by a bank (as
6 defined by Section 581 of the Internal Revenue Code) of the full
7 amount of the warrant in the taxpayer's account in that bank for
8 the benefit of the taxpayer.

9 (b) For purposes of subdivision (a), "tax preparer" means any
10 person who prepares for compensation, or who employs one or
11 more persons to prepare for compensation, any return of tax
12 imposed by Part 10 (commencing with Section 17001)-~~or~~, Part 11
13 (commencing with Section 23001), *or Part 12 (commencing with*
14 *Section 27001)* or any claim for refund of tax imposed by Part 10
15 ~~or~~, Part 11, *or Part 12*. For purposes of the preceding sentence,
16 the preparation of a substantial portion of a return or claim for
17 refund shall be treated as if it were the preparation of that return
18 or claim for refund.

19 A person shall not be a "tax preparer" merely because the person
20 does any of the following:

21 (1) Furnishes typing, reproducing, or other mechanical
22 assistance.

23 (2) Prepares a return or claim for refund of the employer (or of
24 an officer or employee of the employer) by whom that person is
25 regularly and continuously employed.

26 (3) Prepares as a fiduciary a return or claim for refund for any
27 person.

28 (c) This section shall not apply where the tax preparer has
29 advanced the taxpayer an amount of money equal to or greater
30 than the amount of the taxpayer's refund.

31 *SEC. 92. Section 19173 of the Revenue and Taxation Code is*
32 *amended to read:*

33 19173. (a) A penalty shall be imposed under this part for
34 failure to maintain lists of advisees with respect to reportable
35 transactions and shall be determined in accordance with Section
36 6708 of the Internal Revenue Code, except as otherwise provided.

37 (b) If a material advisor fails to meet the requirements of
38 subdivision (d) of Section 18648 with respect to a listed transaction,
39 as defined in Section 6707A(c)(2) of the Internal Revenue Code,
40 an additional penalty shall be imposed equal to the greater of:

1 (1) One hundred thousand dollars (\$100,000).

2 (2) Fifty percent of the gross income that the material advisor
3 derived from that activity.

4 (c) A penalty imposed under this section does not apply if it is
5 shown that the additional information required under paragraph
6 (1) of subdivision (d) of Section 18648 was not identified in a
7 Franchise Tax Board notice issued prior to the date the transaction
8 or shelter was entered into.

9 (d) The penalty imposed by subdivision (a) shall be assessed
10 against the person required to maintain or provide a list under
11 Section 18648. The penalty may be assessed at any time during
12 the period ending eight years after the failure has occurred.

13 (e) (1) The Chief Counsel of the Franchise Tax Board may
14 rescind all or any portion of any penalty imposed by this section
15 with respect to a list required to be maintained or provided under
16 Section 18648, if all of the following apply:

17 (A) The violation is with respect to a reportable transaction,
18 other than a listed transaction, as defined in Section 6707A(c)(2)
19 of the Internal Revenue Code.

20 (B) The person on whom the penalty is imposed has a history
21 of complying with the requirements of this part and Part 10
22 (commencing with Section 17001)-~~or~~, Part 11 (commencing with
23 Section 23001), *or Part 12 (commencing with Section 27001)*.

24 (C) It is shown that the violation is due to an unintentional
25 mistake of fact.

26 (D) Imposing the penalty would be against equity and good
27 conscience.

28 (E) Rescinding the penalty would promote compliance with the
29 requirements of this part and Part 10 (commencing with Section
30 17001)-~~or~~, Part 11 (commencing with Section 23001), *or Part 12*
31 *(commencing with Section 27001)* and effective tax administration.

32 (2) The exercise of authority under paragraph (1) shall be at the
33 sole discretion of the Chief Counsel of the Franchise Tax Board
34 and may not be delegated.

35 (3) Notwithstanding any other law or rule of law, any
36 determination under this subdivision may not be reviewed in any
37 administrative or judicial proceeding.

38 (f) Article 3 (commencing with Section 19031) of this chapter
39 (relating to deficiency assessments) shall not apply with respect

1 to the assessment or collection of any penalty imposed by
2 subdivision (a).

3 (g) The penalty imposed by this section is in addition to any
4 penalty imposed under Part 10 (commencing with Section 17001),
5 Part 11 (commencing with Section 23001), *or Part 12 (commencing*
6 *with Section 27001)*, or this part.

7 SEC. 93. *Section 19179 of the Revenue and Taxation Code is*
8 *amended to read:*

9 19179. (a) A penalty shall be imposed for filing a frivolous
10 return and shall be determined in accordance with Section 6702
11 of the Internal Revenue Code, except as otherwise provided.

12 (b) Section 6702 of the Internal Revenue Code shall be applied
13 to returns required to be filed under this part.

14 (c) Section 6702 of the Internal Revenue Code is modified as
15 follows:

16 (1) (A) By substituting the phrase “tax imposed under Part 10
17 (commencing with Section 17001), Part 11 (commencing with
18 Section 23001), *or Part 12 (commencing with Section 27001)*, or
19 this part” for the phrase “tax imposed by this title” contained
20 therein.

21 (B) By substituting the phrase “frivolous or is based on a
22 position that the Franchise Tax Board has identified as frivolous
23 under subdivision (d) of Section 19179” for the term “frivolous”
24 contained therein.

25 (C) By substituting the phrase “reflects a desire to delay or
26 impede the administration of federal income tax laws as determined
27 by the Secretary of the Treasury or the administration of the tax
28 imposed under Part 10 (commencing with Section 17001), Part 11
29 (commencing with Section 23001), *Part 12 (commencing with*
30 *Section 27001)*, or this part as determined by the Franchise Tax
31 Board” for the phrase “reflects a desire to delay or impede the
32 administration of Federal tax laws” contained therein.

33 (D) By substituting the phrase “is based on a position which the
34 Secretary of the Treasury has identified as frivolous under Section
35 6702(c) of the Internal Revenue Code or the Franchise Tax Board
36 has identified as frivolous under subdivision (d)” for the phrase
37 “is based on a position which the Secretary has identified as
38 frivolous under subsection (c).”

39 (E) By substituting the phrase “If the Franchise Tax Board
40 provides a person with notice that a submission is a specified

1 frivolous submission and the person withdraws that submission
2 within 30 days after the notice, the penalty imposed under Section
3 6702(b)(1) of the Internal Revenue Code does not apply with
4 respect to that submission” for the phrase “If the Secretary provides
5 a person with notice that a submission is a specified frivolous
6 submission and such person withdraws such submission within
7 30 days after such notice, the penalty imposed under paragraph
8 (1) shall not apply with respect to such submission.”

9 (2) Section 6702(b)(2)(B) of the Internal Revenue Code shall
10 not apply and, in lieu thereof, the phrase “specified submission”
11 means any of the following:

12 (A) A protest under Section 19041.

13 (B) A request for a hearing under Section 19044.

14 (C) An application under any of the following sections:

15 (i) Section 19008, relating to agreements for payment of tax
16 liability in installments.

17 (ii) Section 19443, relating to compromises.

18 (iii) Section 21004, relating to actions of the Taxpayers’ Rights
19 Advocate.

20 (iv) Section 21015.5, relating to a request for review prior to
21 levy.

22 (d) (1) The Franchise Tax Board shall prescribe (and
23 periodically revise) a list of positions which the Secretary of the
24 Treasury for federal income tax purposes or the Franchise Tax
25 Board has identified as being frivolous for purposes of this section.

26 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
27 Division 3 of Title 2 of the Government Code does not apply to
28 any standard, criterion, procedure, determination, rule, notice, or
29 guideline established or prescribed by the Franchise Tax Board
30 pursuant to paragraph (1).

31 (e) (1) The Chief Counsel of the Franchise Tax Board may
32 rescind all or any portion of any penalty imposed by this section
33 if both of the following apply:

34 (A) Imposing the penalty would be against equity and good
35 conscience.

36 (B) Rescinding the penalty would promote compliance with the
37 requirements of this part and Part 10 (commencing with Section
38 ~~17001~~ *or* 17001), Part 11 (commencing with Section 23001), *or*
39 *Part 12 (commencing with Section 27001)* and effective tax
40 administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) The penalties imposed by this section shall be in addition to any other penalty provided by law.

SEC. 94. Section 19184 of the Revenue and Taxation Code is amended to read:

19184. (a) A penalty of fifty dollars (\$50) shall be imposed for each failure, unless it is shown that the failure is due to reasonable cause, by any person required to file who fails to file a report at the time and in the manner required by any of the following provisions:

(1) Subdivision (c) of Section 17507, relating to individual retirement accounts.

(2) Section 220(h) of the Internal Revenue Code, relating to medical savings accounts for taxable years beginning on or after January 1, 1997.

(3) Subdivision (b) of Section 17140.3 ~~or subdivision (b) of Section 23711 relating to qualified tuition programs.~~

~~(4) Subdivision (e) of Section 23712, relating to Coverdell education savings accounts.~~

(b) (1) Any individual who:

(A) Is required to furnish information under Section 17508 as to the amount designated nondeductible contributions made for any taxable year, and

(B) Overstates the amount of those contributions made for that taxable year, shall pay a penalty of one hundred dollars (\$100) for each overstatement unless it is shown that the overstatement is due to reasonable cause.

(2) Any individual who fails to file a form required to be filed by the Franchise Tax Board under Section 17508 shall pay a penalty of fifty dollars (\$50) for each failure unless it is shown that the failure is due to reasonable cause.

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

1 *SEC. 95. Section 19188 is added to the Revenue and Taxation*
2 *Code, to read:*

3 *19188. With respect to any penalty or addition to tax that is*
4 *imposed on a taxpayer subject to tax under Part 12 (commencing*
5 *with Section 27001) under a provision of this article and that*
6 *provision refers to the Internal Revenue Code, any reference to*
7 *income or taxable income in the applicable provision of the*
8 *Internal Revenue Code shall be interpreted to mean gross receipts*
9 *or business net receipts, respectively, subject to tax under Part 12*
10 *(commencing with Section 27001).*

11 *SEC. 96. Section 19195 of the Revenue and Taxation Code is*
12 *amended to read:*

13 19195. (a) Notwithstanding any other provision of law,
14 including Section 6254.21 of the Government Code, the Franchise
15 Tax Board shall make available as a matter of public record at
16 least twice each calendar year a list of the 500 largest tax
17 delinquencies in excess of one hundred thousand dollars (\$100,000)
18 under Part 10~~and~~, Part 11, *and Part 12* of this division. For
19 purposes of compiling the list, a tax delinquency means the total
20 amount owed by a taxpayer to the State of California for which a
21 notice of state tax lien has been recorded in any county recorder's
22 office in this state, pursuant to Chapter 14 (commencing with
23 Section 7150) of Division 7 of Title 1 of the Government Code.

24 (b) For purposes of the list, a tax delinquency does not include
25 any of the following and may not be included on the list:

26 (1) A delinquency for which payment arrangements have been
27 agreed to by both the taxpayer and the Franchise Tax Board and
28 the taxpayer is in compliance with the arrangement.

29 (2) A delinquency for which the taxpayer has filed for
30 bankruptcy protection pursuant to Title 11 of the United States
31 Code.

32 (3) A delinquency for which the person or persons liable for the
33 tax have contacted the Franchise Tax Board and for which
34 resolution of the tax delinquency has been accepted by the
35 Franchise Tax Board.

36 (c) Each list shall, with respect to each delinquency, include all
37 the following:

38 (1) The name of the person or persons liable for payment of the
39 tax and that person's or persons' address.

1 (2) The amount of tax delinquency as shown on the notice or
2 notices of state tax lien and any applicable interest or penalties,
3 less any amounts paid.

4 (3) The earliest date that a notice of state tax lien was filed.

5 (4) The type of tax that is delinquent.

6 (5) The type, status, and license number of any occupational or
7 professional license held by the person or persons liable for
8 payment of the tax.

9 (6) The names and titles of the principal officers of the person
10 liable for payment of the tax if that person is a limited liability
11 company or corporation. The Franchise Tax Board shall refer to
12 the limited liability company's or the corporation's Statement of
13 Information filed with the Secretary of State or to the limited
14 liability company's or the corporation's tax return filed pursuant
15 to this part to determine the principal officers of the limited liability
16 company or corporation. Principal officers appearing on a list
17 solely pursuant to this paragraph shall not be subject to Section
18 494.5 of the Business and Professions Code, or Section 10295.4
19 of the Public Contract Code.

20 (d) Prior to making a tax delinquency a matter of public record
21 as required by this section, the Franchise Tax Board shall provide
22 a preliminary written notice to the person or persons liable for the
23 tax by certified mail, return receipt requested. If within 30 days
24 after issuance of the notice, the person or persons do not remit the
25 amount due or make arrangements with the Franchise Tax Board
26 for payment of the amount due, the tax delinquency shall be
27 included on the list.

28 (e) The list described in subdivision (a) shall include the
29 following:

30 (1) The telephone number and address of the Franchise Tax
31 Board office to contact if a person believes placement of his or
32 her name on the list is in error.

33 (2) The aggregate number of persons that have appeared on the
34 list who have satisfied their delinquencies in their entirety and the
35 dollar amounts, in the aggregate, that have been paid attributable
36 to those delinquencies.

37 (f) As promptly as feasible, but no later than five business days
38 from the occurrence of any of the following, the Franchise Tax
39 Board shall remove that taxpayer's name from the list of tax
40 delinquencies:

1 (1) Tax delinquencies for which the person liable for the tax
2 has contacted the Franchise Tax Board and resolution of the
3 delinquency has been arranged.

4 (2) Tax delinquencies for which the Franchise Tax Board has
5 verified that an active bankruptcy proceeding has been initiated.

6 (3) Tax delinquencies for which the Franchise Tax Board has
7 verified that a bankruptcy proceeding has been completed and
8 there are no assets available with which to pay the delinquent
9 amount or amounts.

10 (4) Tax delinquencies that the Franchise Tax Board has
11 determined to be uncollectible.

12 (g) A person whose delinquency appears on the list, and who
13 satisfies that delinquency in whole or in part, may request the
14 Franchise Tax Board to include in its list any payments that person
15 made to satisfy the delinquency. Upon receipt of that request, the
16 Franchise Tax Board shall include those payments on the list as
17 promptly as feasible.

18 (h) Notwithstanding subdivision (a), a person whose delinquency
19 appeared on the list and whose name has been removed pursuant
20 to paragraph (1) of subdivision (f) shall comply with the terms of
21 the arranged resolution. If the person fails to do so, the Franchise
22 Tax Board may add that person's name to the list of delinquencies
23 without providing the prior written notice otherwise required by
24 subdivision (d).

25 *SEC. 97. Section 19201 of the Revenue and Taxation Code is*
26 *amended to read:*

27 19201. If any amount due under Part 10 (commencing with
28 Section 17001), Part 11 (commencing with Section 23001), *or*
29 *Part 12 (commencing with Section 27001)*, or any amount that
30 may be collected by the Franchise Tax Board as though it were a
31 tax, is not paid, the Franchise Tax Board may file in the Office of
32 the County Clerk of Sacramento County, or any other county, a
33 certificate specifying the amount due, the name and last known
34 address of the taxpayer liable for the amount due, and the fact that
35 the Franchise Tax Board has complied with all provisions of the
36 law in the computation and levy of the amount due, and a request
37 that judgment be entered against the taxpayer in the amount set
38 forth in the certificate.

39 *SEC. 98. Section 19202 of the Revenue and Taxation Code is*
40 *amended to read:*

19202. The county clerk immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the taxpayer in the amount set forth in the certificate. The county clerk may file the judgment in a loose-leaf book entitled “Personal Income Tax Judgments,” ~~or “Bank and Corporation Tax Judgments,”~~ or “*Business Net Receipts Tax Judgments*,” as appropriate.

SEC. 99. Section 19221 of the Revenue and Taxation Code is amended to read:

19221. (a) If any taxpayer or person fails to pay any liability imposed under Part 10 (commencing with Section 17001) ~~or, Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001)~~ at the time that it becomes due and payable, the amount thereof, (including any interest, additional amount, addition to tax, or penalty, together with any costs that may accrue in addition thereto) shall thereupon be a perfected and enforceable state tax lien. This lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts of any liability disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board, except that in no case will it be prior to the day after the payment due date;

(2) For amounts of any liability disclosed on a return filed after the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board;

(3) For amounts of any liability determined under Section 19081 or 19082 (pertaining to jeopardy assessments), the date the notice of the Franchise Tax Board’s finding is mailed or issued;

(4) For all other amounts of liability, the date the assessment is final.

(c) Notwithstanding subdivision (a), during any period that Section 362 of Title 11 of the United States Code applies, any tax lien that would otherwise attach to property by reason of subdivision (a) shall not take effect, unless the tax is a debt of the debtor that will not be discharged in the bankruptcy proceeding

1 and the property or its proceeds are transferred out of the
2 bankruptcy estate to, or otherwise revested in, the debtor.

3 *SEC. 100. Section 19222 of the Revenue and Taxation Code*
4 *is amended to read:*

5 19222. For the purposes of this section, if any certified,
6 treasurer's, or cashier's check (or other guaranteed draft), or any
7 money order received in payment of any liability imposed under
8 Part 10 (commencing with Section 17001), Part 11 (commencing
9 with Section 23001), *Part 12 (commencing with Section 27001)*,
10 or this part is not duly paid, the state shall, in addition to its right
11 to exact payment from the party originally indebted therefor, have
12 a perfected and enforceable state tax lien for the amount of that
13 check (or draft) upon all the assets of the financial institution on
14 which drawn or for the amount of that money order upon all the
15 assets of the issuer thereof. The lien referred to in the preceding
16 sentence shall be subject to Chapter 14 (commencing with Section
17 7150) of Division 7 of Title 1 of the Government Code.

18 *SEC. 101. Section 19254 of the Revenue and Taxation Code*
19 *is amended to read:*

20 19254. (a) (1) If any person, other than an organization exempt
21 from taxation under Section 23701 *or 27701*, fails to pay any
22 amount of tax, penalty, addition to tax, interest, or other liability
23 imposed and delinquent under Part 10 (commencing with Section
24 17001), Part 11 (commencing with Section 23001), *Part 12*
25 *(commencing with Section 27001)*, or this part, a collection cost
26 recovery fee shall be imposed if the Franchise Tax Board has
27 mailed notice to that person for payment that advises that continued
28 failure to pay the amount due may result in collection action,
29 including the imposition of a collection cost recovery fee. The
30 collection cost recovery fee shall be in the amount of:

31 (A) In the case of an individual, ~~partnership, limited liability~~
32 ~~company classified as a partnership for California income tax~~
33 ~~purposes~~, or fiduciary, eighty-eight dollars (\$88) or an amount as
34 adjusted under subdivision (b).

35 (B) In the case of a *business entity subject to tax under Part 12*
36 *(commencing with Section 27001)*, *other than an individual*
37 ~~corporation or limited liability company classified as a corporation~~
38 ~~for California income tax purposes~~, one hundred sixty-six dollars
39 (\$166) or an amount as adjusted under subdivision (b).

(2) If any person, other than an organization exempt from taxation under Section 23701 *or* 27701, fails or refuses to make and file a tax return required by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part, within 25 days after formal legal demand to file the tax return is mailed to that person by the Franchise Tax Board, the Franchise Tax Board shall impose a filing enforcement cost recovery fee in the amount of:

(A) In the case of an individual, ~~partnership, limited liability company classified as a partnership for California income tax purposes~~, or fiduciary, fifty-one dollars (\$51) or an amount as adjusted under subdivision (b).

(B) In the case of a *business entity subject to tax under Part 12 (commencing with Section 27001)*, *other than an individual corporation or limited liability company classified as a corporation for California income tax purposes*, one hundred nineteen dollars (\$119) or an amount as adjusted under subdivision (b).

(b) For fees imposed under this section during the fiscal year 1993–94 and fiscal years thereafter, the amount of those fees shall be set to reflect actual costs and shall be specified in the annual Budget Act.

(c) Interest shall not accrue with respect to the cost recovery fees provided by this section.

(d) The amounts provided by this section are obligations imposed by this part and may be collected in any manner provided under this part for the collection of a tax.

(e) Subdivision (a) is operative with respect to the notices for payment or formal legal demands to file, either of which is mailed on or after September 15, 1992.

(f) The Franchise Tax Board shall determine the total amount of the cost recovery fees collected or accrued through June 30, 1993, and shall notify the Controller of that amount. The Controller shall transfer that amount to the Franchise Tax Board, and that amount is hereby appropriated to the board for the 1992–93 fiscal year for reimbursement of its collection and filing enforcement efforts.

SEC. 102. Section 19255 of the Revenue and Taxation Code is amended to read:

19255. (a) Except as otherwise provided in subdivisions (b) and (e), after 20 years have lapsed from the date the latest tax

1 liability for a taxable year or the date any other liability that is not
2 associated with a taxable year becomes “due and payable” within
3 the meaning of Section 19221, the Franchise Tax Board may not
4 collect that amount and the taxpayer’s liability to the state for that
5 liability is abated by reason of lapse of time. Any actions taken by
6 the Franchise Tax Board to collect an uncollectible liability shall
7 be released, withdrawn, or otherwise terminated by the Franchise
8 Tax Board, and no subsequent administrative or civil action shall
9 be taken or brought to collect all or part of that uncollectible
10 amount. Any amounts received in contravention of this section
11 shall be considered an overpayment pursuant to Section 19306
12 that may be credited and refunded in accordance with Section
13 19301.

14 (b) If a timely civil action filed pursuant to Article 2 of Chapter
15 6 of this part is commenced, or a claim is filed in a probate action,
16 the period for which the liability is collectable shall be extended
17 and shall not expire until that liability, probate claim, or judgment
18 against the taxpayer arising from that liability is satisfied or
19 becomes unenforceable under the laws applicable to the
20 enforcement of civil judgments.

21 (c) For purposes of this section, both of the following apply:

22 (1) “Tax liability” means a liability imposed under Part 10
23 (commencing with Section 17001), Part 11 (commencing with
24 Section 23001), *Part 12 (commencing with Section 27001)*, or this
25 part, and includes any additions to tax, interest, penalties, fees and
26 any other amounts relating to the imposed liability.

27 (2) If more than one liability is “due and payable” for a particular
28 taxable year, with the exception of a liability resulting from a
29 penalty imposed under Section 19777.5, the “due and payable”
30 date that is later in time shall be the date upon which the 20-year
31 limitation of subdivision (a) commences.

32 (d) This section shall not apply to amounts subject to collection
33 by the Franchise Tax Board pursuant to Article 5, 5.5, or 6 of this
34 chapter, or any other amount that is not a tax imposed under Part
35 10-~~or~~, Part 11, *or Part 12*, but which the Franchise Tax Board is
36 collecting as though it were a final personal income tax
37 delinquency.

38 (e) (1) The expiration of the period of limitation on collection
39 under this section shall be suspended for the following periods:

1 (A) The period that the Franchise Tax Board is prohibited from
2 involuntary collection under subparagraph (B) of paragraph (1) of
3 subdivision (b) of Section 19271 relating to collection of child
4 support delinquencies, plus 60 days thereafter.

5 (B) The period during which the Franchise Tax Board is
6 prohibited by reason of a bankruptcy case from collecting, plus
7 six months thereafter.

8 (C) The period described under subdivision (d) of Section 19008
9 relating to installment payment agreements.

10 (D) The period during which collection is postponed by
11 operation of law under Section 18571, related to postponement by
12 reason of service in a combat zone, or under Section 18572, related
13 to postponement by reason of presidentially declared disaster or
14 terroristic or military action.

15 (E) During any other period during which collection of a tax is
16 suspended, postponed, or extended by operation of law.

17 (2) A suspension of the period of limitation under this
18 subdivision shall apply with respect to both parties of any liability
19 that is joint and several.

20 (f) This section shall be applied on and after July 1, 2006, to
21 any liability “due and payable” before, on, or after that date.

22 *SEC. 103. Section 19280 of the Revenue and Taxation Code*
23 *is amended to read:*

24 19280. (a) (1) Fines, state or local penalties, bail, forfeitures,
25 restitution fines, restitution orders, or any other amounts imposed
26 by a superior court of the State of California upon a person or any
27 other entity that are due and payable in an amount totaling no less
28 than one hundred dollars (\$100), in the aggregate, for criminal
29 offenses, including all offenses involving a violation of the Vehicle
30 Code, and any amounts due pursuant to Section 903.1 of the
31 Welfare and Institutions Code may, no sooner than 90 days after
32 payment of that amount becomes delinquent, be referred by the
33 superior court, the county, or the state to the Franchise Tax Board
34 for collection under guidelines prescribed by the Franchise Tax
35 Board. Unless the victim of the crime notifies the Department of
36 Corrections and Rehabilitation to the contrary, the Department of
37 Corrections and Rehabilitation may refer a restitution order to the
38 Franchise Tax Board, in accordance with subparagraph (B) of
39 paragraph (2), for any person subject to the restitution order who

1 is or has been under the jurisdiction of the Department of
2 Corrections and Rehabilitation.

3 (2) For purposes of this subdivision:

4 (A) The amounts referred by the superior court, the county, or
5 state under this section may include an administrative fee and any
6 amounts that a government entity may add to the court-imposed
7 obligation as a result of the underlying offense, trial, or conviction.
8 For purposes of this article, those amounts shall be deemed to be
9 imposed by the court.

10 (B) Restitution orders may be referred to the Franchise Tax
11 Board only by a government entity, as agreed upon by the
12 Franchise Tax Board, provided that all of the following apply:

13 (i) The government entity has the authority to collect on behalf
14 of the state or the victim.

15 (ii) The government entity shall be responsible for distributing
16 the restitution order collections, as appropriate.

17 (iii) The government entity shall ensure, in making the referrals
18 and distributions, that it coordinates with any other related
19 collection activities that may occur by superior courts, counties,
20 or other state agencies.

21 (iv) The government entity shall ensure compliance with laws
22 relating to the reimbursement of the State Restitution Fund.

23 (C) The Franchise Tax Board shall establish criteria for referral,
24 which shall include setting forth a minimum dollar amount subject
25 to referral and collection.

26 (b) The Franchise Tax Board, in conjunction with the Judicial
27 Council, shall seek whatever additional resources are needed to
28 accept referrals from all 58 counties or superior courts.

29 (c) Upon written notice to the debtor from the Franchise Tax
30 Board, any amount referred to the Franchise Tax Board under
31 subdivision (a) and any interest thereon, including any interest on
32 the amount referred under subdivision (a) that accrued prior to the
33 date of referral, shall be treated as final and due and payable to the
34 State of California, and shall be collected from the debtor by the
35 Franchise Tax Board in any manner authorized under the law for
36 collection of a delinquent personal income tax liability, including,
37 but not limited to, issuance of an order and levy under Article 4
38 (commencing with Section 706.070) of Chapter 5 of Division 2
39 of Title 9 of Part 2 of the Code of Civil Procedure in the manner
40 provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), ~~and~~ Part 11 (commencing with Section 23001), *and Part 12 (commencing with Section 27001)* shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), ~~or~~ Part 11 (commencing with Section 23001), *or Part 12 (commencing with Section 27001)*.

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) ~~and~~, Part 11 (commencing with Section 23001), *and Part 12 (commencing with Section 27001)*.

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) ~~or~~, Part 11 (commencing with Section 23001), *or Part 12 (commencing with Section 27001)*.

SEC. 104. Section 19290 of the Revenue and Taxation Code is amended to read:

19290. (a) The Department of Industrial Relations shall enter into an agreement with the Franchise Tax Board that transfers responsibility from the department to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and

any interest thereon, effective July 1, 1995. Under the agreement, the Franchise Tax Board shall collect unsatisfied judgments that are issued pursuant to Sections 98.2, 226.5, 1023, 1289, 2681, and 6650 of the Labor Code. The agreement shall also provide for the collection of delinquent debts that result from a final determination by the department after the exhaustion of appeal remedies pursuant to Sections 98.3, 210, 1174.5, 1193.6, 1194, 1194.2, 1197.1, 1197.5, 1771, 1774, 3722, 7314, 7350, 7721, and 7904 of the Labor Code. The agreement shall specify the terms under which fees, wages, penalties, and costs, and any interest thereon, become subject to collection by the Franchise Tax Board.

The agreement may also provide for reimbursement to the Franchise Tax Board on the basis of a percentage of the amount of revenue realized as a result of the Franchise Tax Board's services, provided that the amount of any reimbursement shall not exceed the actual costs of collection, including court costs and reasonable attorney's fees. Wherever possible the collection costs shall be borne by the judgment debtor. Any fee for the recovery of wages shall not be paid by the workers. The department shall adopt rules and regulations to provide for a reasonable fee to cover actual collection costs. The Franchise Tax Board shall be entitled to court costs and reasonable attorney's fees as a judgment creditor under subdivision (i) of Section 98.2 of the Labor Code.

(b) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral and any fee imposed to cover collection costs as provided under subdivision (a), shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in the manner provided for earnings withholding orders for taxes.

(c) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), ~~and~~ Part 11 (commencing with Section 23001), *and Part 12 (commencing with*

1 *Section 27001*) shall apply to amounts referred under this article
2 in the same manner and with the same force and effect and to the
3 full extent as if the language of those laws had been incorporated
4 in full into this article, except to the extent that any provision is
5 either inconsistent with this article or is not relevant to this article.

6 (2) Any information, information sources, or enforcement
7 remedies and capabilities available to the agency referring the
8 amount due described in subdivision (a), shall be available to the
9 Franchise Tax Board to be used in conjunction with, or independent
10 of, the information, information sources, or remedies and
11 capabilities available to the Franchise Tax Board for purposes of
12 administering Part 10 (commencing with Section 17001), this part,
13 Part 10.7 (commencing with Section 21001), ~~or Part 11~~
14 (commencing with Section 23001), *or Part 12 (commencing with*
15 *Section 27001)*.

16 (d) The activities required to implement and administer this part
17 shall not interfere with the primary mission of the Franchise Tax
18 Board to administer Part 10 (commencing with Section 17001)
19 ~~and, Part 11 (commencing with Section 23001), and Part 12~~
20 *(commencing with Section 27001)*.

21 (e) For amounts referred for collection under subdivision (a),
22 interest shall accrue at the greater of the rate applicable to the
23 amount due being collected or the rate provided under Section
24 19521. When notice of the amount due includes interest and is
25 mailed to the obligor, and the amount is paid within 15 days after
26 the date of notice, interest shall not be imposed for the period after
27 the date of notice.

28 (f) In no event shall a collection under this article be construed
29 as a payment of income taxes imposed under Part 10 (commencing
30 with Section 17001) or Part 11 (commencing with Section 23001).

31 ~~(g) The amendments made by the act adding this subdivision~~
32 ~~are operative for notices issued on or after January 1, 1998.~~

33 *SEC. 105. Section 19301 of the Revenue and Taxation Code*
34 *is amended to read:*

35 19301. (a) If the Franchise Tax Board or the board, as the case
36 may be, finds that there has been an overpayment of any liability
37 imposed under Part 10 (commencing with Section 17001), Part 11
38 (commencing with Section 23001), *Part 12 (commencing with*
39 *Section 27001)*, or this part by a taxpayer for any year for any
40 reason, the amount of the overpayment may be credited against

1 any amount then due from the taxpayer and the balance shall be
2 refunded to the taxpayer.

3 (b) In the case of a joint return filed under Section 18521, the
4 amount of the overpayment may be credited against the amount
5 then due from both taxpayers and the balance shall be refunded to
6 both taxpayers in the names under which the return was paid.

7 (c) In the case of a corporation, the balance shall be refunded
8 to the taxpayer or its successor through reorganization, merger, or
9 consolidation, or to its shareholders upon dissolution.

10 *SEC. 106. Section 19313 of the Revenue and Taxation Code*
11 *is amended to read:*

12 19313. (a) In the case of any tax imposed by Part 10
13 (commencing with Section 17001)-~~or~~, Part 11 (commencing with
14 Section 23001), or Part 12 (commencing with Section 27001) with
15 respect to any person, the period for filing a claim for credit or
16 refund of any overpayment attributable to any partnership item of
17 a federally registered partnership shall not expire before the later
18 of the following:

19 (1) The date which is five years after the date prescribed by
20 law (including extensions thereof) for filing the partnership
21 return for the partnership taxable year in which the item arose.

22 (2) If an agreement under Section 6501(c)(4) of the Internal
23 Revenue Code of 1954 extending the period for the assessment
24 of any deficiency attributable to the partnership item is made
25 before the date specified in paragraph (1), the date six months
26 after the expiration of the extension.

27 In any case to which the preceding sentence applies, the amount
28 of the credit or refund may exceed the portion of the tax paid within
29 the period provided in Section 19306 or 19308, whichever is
30 applicable.

31 (b) For purposes of this subdivision, “partnership item” and
32 “federally registered partnership” have the same meanings as when
33 used in Section 19063.

34 *SEC. 107. Section 19314 of the Revenue and Taxation Code*
35 *is amended to read:*

36 19314. (a) Notwithstanding any statute of limitations otherwise
37 provided for in this part, any overpayment due a taxpayer for any
38 year, shall be allowed as an offset in computing any deficiency in
39 tax, for the same or any other year, if the overpayment results from
40 any of the following:

1 (1) A transfer of items of income or deductions or both to or
2 from another year for the same taxpayer.

3 (2) A transfer of items of income or deductions or both for the
4 same year for a related taxpayer described in Section 19110.

5 (3) A transfer of items of income, *receipt, purchase*, or
6 deductions, ~~or both~~, to or from another taxpayer for the same or
7 different years if the items of income, *receipt, purchase*, or
8 deductions are transferred between affiliated taxpayers whose tax
9 is determined under Chapter 17 (commencing with Section 25101)
10 of Part 11 *or Chapter 7 (commencing with Section 28001) of Part*
11 *12*.

12 (b) The offset provided under subdivision (a) shall not be
13 allowed after the expiration of seven years from the due date of
14 the return or returns on which the overpayment is determined.

15 (c) No refund shall be allowed under subdivision (a) unless
16 before the period set forth in Section 19306 a claim therefor is
17 filed by the taxpayer or unless before the expiration of that period
18 the Franchise Tax Board has allowed a credit or made a refund.

19 *SEC. 108. Section 19340 of the Revenue and Taxation Code*
20 *is amended to read:*

21 19340. Interest shall be allowed and paid on any overpayment
22 in respect of any tax, at the adjusted annual rate established
23 pursuant to Section 19521 as follows:

24 (a) In the case of a credit, from the date of the overpayment to
25 the due date of the amount for which the credit is allowed. Any
26 interest allowed on any credit shall first be credited on any amounts
27 due from the taxpayer under Part 10 (commencing with Section
28 17001), this part, ~~or Part 11 (commencing with Section 23001),~~
29 *or Part 12 (commencing with Section 27001)*.

30 (b) In the case of a refund, including a refund in excess of tax
31 liability as prescribed in subdivision (j) of Section 17053.5, from
32 the date of the overpayment to a date preceding the date of the
33 refund warrant by not more than 30 days, the date to be determined
34 by the Franchise Tax Board.

35 *SEC. 109. Section 19365 of the Revenue and Taxation Code*
36 *is repealed.*

37 ~~19365. (a) (1) A corporation electing to be treated as an “S~~
38 ~~corporation” for a taxable year beginning in 2002 under Chapter~~
39 ~~4.5 (commencing with Section 23800) of Part 11 may file an~~
40 ~~application for the transfer of an overpayment with respect to~~

1 payments of estimated tax for taxable years beginning in 2002 to
2 the personal income tax accounts of its shareholders. An application
3 under this subdivision shall not constitute a claim for credit or
4 refund.

5 (2) An application under this subdivision shall be verified in
6 the manner prescribed by Section 18621 in the case of the taxpayer,
7 and shall be filed in the manner and form prescribed by the
8 Franchise Tax Board. The application shall set forth all of the
9 following:

10 (A) The amount the "S corporation" estimates as its tax liability
11 under this part for the taxable year, which shall not be less than
12 the greater of $1\frac{1}{2}$ percent of its net income or the applicable
13 minimum franchise tax.

14 (B) The amount and date of the estimated tax paid during the
15 taxable year.

16 (C) For each shareholder affected, his or her name, social
17 security account number, address, and percentage of ownership,
18 and any changes in that percentage of ownership for the S
19 corporation's taxable year, the amount of each overpayment to be
20 transferred, and the date the amount was paid.

21 (D) Any other information for purposes of carrying out this
22 section as may be required by the Franchise Tax Board.

23 (b) (1) Within a period of 45 days from the date on which an
24 application for a transfer is filed under subdivision (a), the
25 Franchise Tax Board shall make, to the extent it deems practicable
26 in that period, a limited examination of the application to discover
27 omissions and errors therein, and shall determine the final amount
28 of the transfers upon the basis of the application and the
29 examination, except that the Franchise Tax Board may disallow,
30 without further action, any application which it finds contains
31 material omissions or errors which it deems cannot be corrected
32 within the 45-day period.

33 (2) The Franchise Tax Board, within the 45-day period referred
34 to in paragraph (1), may credit the amount of the overpayment
35 against any liability on the part of the taxpayer under Part 11
36 (commencing with Section 23001).

37 (3) In the event the amount available for transfer is less than
38 requested by the taxpayer, the overpayment amount shall be
39 allocated among the shareholders on a pro rata basis based on their
40 percentage of ownership stated on the application.

1 ~~(4) For purposes of Part 10 (commencing with Section 17001);~~
2 ~~Part 11 (commencing with Section 23001), and this part, the~~
3 ~~transferred amounts shall be treated as if they had been estimated~~
4 ~~tax payments paid by the respective shareholders on the date~~
5 ~~originally paid by the corporation.~~

6 ~~(5) No application under subdivision (a) shall be allowed unless~~
7 ~~the amount to be transferred equals or exceeds five hundred dollars~~
8 ~~(\$500).~~

9 ~~(6) Each S corporation which files an application for transfer~~
10 ~~of overpayments under subdivision (a) shall furnish to each person~~
11 ~~who is a shareholder at any time during the taxable year a statement~~
12 ~~showing amounts and dates of the overpayments being transferred~~
13 ~~to that person's personal income tax account.~~

14 ~~SEC. 110. Section 19371 of the Revenue and Taxation Code~~
15 ~~is amended to read:~~

16 ~~19371. (a) At any time within 10 years after the determination~~
17 ~~of liability for any tax, penalties, and interest, or within the period~~
18 ~~during which a lien is in force as the result of the recording of an~~
19 ~~abstract under Section 19203 or of the recording or filing of a~~
20 ~~notice of state tax lien under Section 7171 of the Government~~
21 ~~Code, the Franchise Tax Board may bring an action in the courts~~
22 ~~of this state, of any other state, or of the United States in the name~~
23 ~~of the people of the State of California to recover the amount of~~
24 ~~any taxes, penalties, and interest due and unpaid under Part 10~~
25 ~~(commencing with Section 17001), Part 11 (commencing with~~
26 ~~Section 23001), or this part.~~

27 ~~(b) The amendments made by Sections 41 and 108 of Chapter~~
28 ~~117 of the Statutes of 1991 shall apply to any of the following:~~

29 ~~(1) Taxes assessed under Part 10 (commencing with Section~~
30 ~~17001), Part 11 (commencing with Section 23001), Part 12~~
31 ~~(commencing with Section 27001), or this part after July 16, 1991.~~

32 ~~(2) Taxes assessed on or before July 16, 1991, under Part 10~~
33 ~~(commencing with Section 17001), Part 11 (commencing with~~
34 ~~Section 23001), or this part, if the period specified in subdivision~~
35 ~~(a), determined without regard to those amendments, has not~~
36 ~~expired on July 16, 1991.~~

37 ~~SEC. 111. Section 19374 of the Revenue and Taxation Code~~
38 ~~is amended to read:~~

39 ~~19374. In the action a certificate by the Franchise Tax Board~~
40 ~~showing the delinquency shall be prima facie evidence of the levy~~

of the tax, penalties and interest of the delinquency, and of the compliance by the Franchise Tax Board and the board with all the provisions of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, and this part in relation to the computation and levy of the tax.

SEC. 112. Section 19377 of the Revenue and Taxation Code is amended to read:

19377. (a) The Franchise Tax Board may enter into agreement with one or more persons for the purpose of collecting delinquent accounts with respect to amounts assessed or imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part, provided the agreements do not cause the net displacement of civil service employees. The agreement may provide for the rate and manner of payment for the contracted collection services. However, the consideration payable by the Franchise Tax Board under the agreement shall not be included in the amounts to be collected from the tax debtor by the contractor providing collection services.

(b) For purposes of this section, “displacement” includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. “Displacement” does not include changes in shifts or days off, nor does it include reassignment to any other position within the same class and general location.

SEC. 113. Section 19441 of the Revenue and Taxation Code is amended to read:

19441. (a) The Franchise Tax Board or any person authorized in writing by the Franchise Tax Board is authorized to enter into an agreement in writing with any person (or the person or estate for whom that person acts) in respect of any tax, interest, penalty, or addition to tax levied under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part for any taxable period.

(b) If the agreement is approved by the Franchise Tax Board, itself, within the time as may be stated in the agreement, or later agreed to, the agreement shall be final and conclusive, and except

1 upon a showing of fraud or malfeasance, or misrepresentation of
2 a material fact:

3 (1) The case shall not be reopened as to the matters agreed upon
4 or the agreement modified, by any officer, employee, or agent of
5 the state, and

6 (2) In any suit, action, or proceeding, the agreement, or any
7 determination, assessment, collection, payment, abatement, refund,
8 or credit made in accordance therewith, shall not be annulled,
9 modified, set aside, or disregarded.

10 *SEC. 114. Section 19443 of the Revenue and Taxation Code*
11 *is amended to read:*

12 19443. (a) (1) The Executive Officer and Chief Counsel of
13 the Franchise Tax Board, jointly, or their delegates, may
14 compromise any final tax liability in which the reduction of tax is
15 seven thousand five hundred dollars (\$7,500) or less.

16 (2) Except as provided in paragraph (3), the Franchise Tax
17 Board, upon recommendation by its executive officer and chief
18 counsel, jointly, may compromise a final tax liability involving a
19 reduction in tax in excess of seven thousand five hundred dollars
20 (\$7,500). Any recommendation for approval of an offer in
21 compromise that is not either approved or disapproved by the
22 Franchise Tax Board, itself, within 45 days of the submission of
23 the recommendation shall be deemed approved.

24 (3) The Franchise Tax Board, itself, may by resolution delegate
25 to the executive officer and the chief counsel, jointly, the authority
26 to compromise a final tax liability in which the reduction of tax is
27 in excess of seven thousand five hundred dollars (\$7,500) but less
28 than ten thousand dollars (\$10,000).

29 (b) For purposes of this section, “a final tax liability” means
30 any final tax liability arising under Part 10 (commencing with
31 Section 17001) ~~or~~, Part 11 (commencing with Section 23001), *or*
32 *Part 12 (commencing with Section 27001)*, or related interest,
33 additions to tax, penalties, or other amounts assessed under this
34 part.

35 (c) For an amount to be compromised under this section, the
36 following conditions shall exist:

37 (1) The taxpayer shall establish that the:

38 (A) Amount offered in payment is the most that can be expected
39 to be paid or collected from the taxpayer’s present assets or income,
40 and

1 (B) Taxpayer does not have reasonable prospects of acquiring
2 increased income or assets that would enable the taxpayer to satisfy
3 a greater amount of the liability than the amount offered, within a
4 reasonable period of time.

5 (2) The Franchise Tax Board shall have determined that
6 acceptance of the compromise is in the best interest of the state.

7 (d) A determination by the Franchise Tax Board that it would
8 not be in the best interest of the state to accept an offer in
9 compromise in satisfaction of a final tax liability shall not be
10 subject to administrative appeal or judicial review.

11 (e) When an offer in compromise is either accepted or rejected,
12 or the terms and conditions of a compromise agreement are
13 fulfilled, the Franchise Tax Board shall notify the taxpayer in
14 writing.

15 (f) In the case of a joint and several liability, the acceptance of
16 an offer in compromise from one liable spouse shall not relieve
17 the other spouse from paying the entire liability. However, the
18 amount of the liability shall be reduced by the amount of the
19 accepted offer.

20 (g) Whenever a compromise of tax or penalties or total tax and
21 penalties in excess of five hundred dollars (\$500) is approved,
22 there shall be placed on file for at least one year in the office of
23 the Executive Officer of the Franchise Tax Board a public record
24 with respect to that compromise. The public record shall include
25 all of the following information:

26 (1) The name of the taxpayer.

27 (2) The amount of unpaid tax, and related penalties, additions
28 to tax, interest, or other amounts involved.

29 (3) The amount offered.

30 (4) A summary of the reason why the compromise is in the best
31 interest of the state.

32 The public record shall not include any information that relates
33 to any trade secret, patent, process, style of work, apparatus,
34 business secret, or organizational structure, that if disclosed, would
35 adversely affect the taxpayer or the national defense. No list shall
36 be prepared and no releases distributed by the Franchise Tax Board
37 in connection with these statements.

38 (h) Any compromise made under this section may be rescinded,
39 all compromised liabilities may be reestablished (without regard
40 to any statute of limitations that otherwise may be applicable), and

1 no portion of the amount offered in compromise refunded, if either
2 of the following occurs:

3 (1) The Franchise Tax Board determines that any person did
4 any of the following acts regarding the making of the offer:

5 (A) Concealed from the Franchise Tax Board any property
6 belonging to the estate of any taxpayer or other person liable for
7 the tax.

8 (B) Received, withheld, destroyed, mutilated, or falsified any
9 book, document, or record or made any false statement, relating
10 to the estate or financial condition of the taxpayer or other person
11 liable for the tax.

12 (2) The taxpayer fails to either:

13 (A) Comply with any of the terms and conditions relative to the
14 offer.

15 (B) File subsequent required returns and pay subsequent final
16 tax liabilities within 20 days after the Franchise Tax Board issues
17 notice and demand to the person stating that the continued failure
18 to file or pay the tax may result in rescission of the compromise.

19 (i) This section shall become operative on the effective date of
20 the act adding this section without regard to the taxable year at
21 issue.

22 *SEC. 115. Section 19501 of the Revenue and Taxation Code*
23 *is amended to read:*

24 19501. The Franchise Tax Board shall administer and enforce
25 Part 10 (commencing with Section 17001), Part 10.7 (commencing
26 with Section 21001), Part 11 (commencing with Section 23001),
27 *Part 12 (commencing with Section 27001)*, and this part. For this
28 purpose, it may divide the state into a reasonable number of
29 districts, in each of which a branch office or offices may be
30 maintained during all or part of the time as may be necessary.

31 *SEC. 116. Section 19503 of the Revenue and Taxation Code*
32 *is amended to read:*

33 19503. (a) The Franchise Tax Board shall prescribe all rules
34 and regulations necessary for the enforcement of Part 10
35 (commencing with Section 17001), Part 10.7 (commencing with
36 Section 21001), Part 11 (commencing with Section 23001), *Part*
37 *12 (commencing with Section 27001)*, and this part and may
38 prescribe the extent to which any ruling (including any judicial
39 decision or any administrative determination other than by
40 regulation) shall be applied without retroactive effect.

(b) (1) Except as otherwise provided in this subdivision, no regulation relating to Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part shall apply to any taxable year ending before the date on which any notice substantially describing the expected contents of any regulation is issued to the public.

(2) Paragraph (1) shall not apply to either of the following:

(A) Regulations issued within 24 months of the date of the enactment of the statutory provision to which the regulation relates.

(B) Regulations issued within 24 months of the date that temporary or final federal regulations with respect to statutory provisions to which California conforms are filed with the Federal Register.

(3) The Franchise Tax Board may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) The Franchise Tax Board may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) The limitation of paragraph (1) shall not apply to any regulation relating to the Franchise Tax Board's policies, practices, or procedures.

(6) The limitation of paragraph (1) may be superseded by a legislative grant of authority to the Franchise Tax Board to prescribe the effective date with respect to any regulation.

(7) The Franchise Tax Board may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(c) The amendments made by the act adding this subdivision are operative with respect to regulations which relate to California statutory provisions enacted on or after January 1, 1998.

SEC. 117. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part (or the liability

1 at law or in equity of any transferee in respect of that liability);
2 shall have the power to require by demand, that an entity of any
3 kind including, but not limited to, employers, persons, or financial
4 institutions provide information or make available for examination
5 or copying at a specified time and place, or both, any book, papers,
6 or other data which may be relevant to that purpose. Any demand
7 to a financial institution shall comply with the California Right to
8 Financial Privacy Act set forth in Chapter 20 (commencing with
9 Section 7460) of Division 7 of Title 1 of the Government Code.
10 Information that may be required upon demand includes, but is
11 not limited to, any of the following:

12 (1) Addresses and telephone numbers of persons designated by
13 the Franchise Tax Board.

14 (2) Information contained on Federal Form W-2 (Wage and Tax
15 Statement), Federal Form W-4 (Employee's Withholding
16 Allowance Certificate), or State Form DE-4 (Employee's
17 Withholding Allowance Certificate).

18 (b) The Franchise Tax Board may require the attendance of the
19 taxpayer or of any other person having knowledge in the premises
20 and may take testimony and require material proof for its
21 information and administer oaths to carry out this part.

22 (c) (1) The Franchise Tax Board may issue subpoenas or
23 subpoenas duces tecum, which subpoenas must be signed by any
24 member of the Franchise Tax Board, and may be served on any
25 person for any purpose.

26 (2) For taxpayers that have been contacted by the Franchise Tax
27 Board regarding the use of an abusive tax avoidance transaction,
28 as defined in Section 19777, the subpoena may be signed by any
29 member of the Franchise Tax Board, the Executive Officer of the
30 Franchise Tax Board, or any designee.

31 (d) Obedience to subpoenas or subpoenas duces tecum issued
32 in accordance with this section may be enforced by application to
33 the superior court as set forth in Article 2 (commencing with
34 Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of
35 the Government Code.

36 (e) When examining a return, the Franchise Tax Board shall
37 not use financial status or economic reality examination techniques
38 to determine the existence of unreported income of any taxpayer
39 unless the Franchise Tax Board has a reasonable indication that

1 there is a likelihood of unreported income. This subdivision applies
2 to any examination beginning on or after October 10, 1999.

3 (f) The amendments made to this section by the act adding this
4 subdivision shall apply to subpoenas issued on or after the effective
5 date of the act adding this subdivision.

6 *SEC. 118. Section 19504.5 of the Revenue and Taxation Code*
7 *is amended to read:*

8 19504.5. (a) (1) Except as provided in subdivision (b), no
9 subpoena may be issued under this part and the Franchise Tax
10 Board may not begin any action under Article 2 (commencing with
11 Section 1180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the
12 Government Code to enforce any subpoena to produce or analyze
13 any tax-related computer software source code.

14 (2) Any software and related materials that are provided to the
15 Franchise Tax Board under this part shall be subject to the
16 safeguards under subdivision (c).

17 (b) (1) Paragraph (1) of subdivision (a) shall not apply to any
18 portion, item, or component of the tax-related computer software
19 source code if all of the following apply:

20 (A) The Franchise Tax Board is unable to otherwise reasonably
21 ascertain the correctness of any item on a return from either of the
22 following:

23 (i) The taxpayer's books, papers, records, or other data.

24 (ii) The computer software executable code (and any
25 modifications thereof) to which the source code relates and any
26 associated data which, when executed, produces the output to
27 ascertain the correctness of the item.

28 (B) The Franchise Tax Board identifies with reasonable
29 specificity the portion, item, or component of the source code
30 needed to verify the correctness of the item on the return.

31 (C) The Franchise Tax Board determines that the need for the
32 portion, item, or component of the source code with respect to the
33 item outweighs the risks of unauthorized disclosure of trade secrets.

34 (2) Paragraph (1) of subdivision (a) shall not apply to any of
35 the following:

36 (A) Any inquiry into any offense connected with the
37 administration or enforcement of this part, Part 10 (commencing
38 with Section 17001), Part 10.7 (commencing with Section 21001),
39 ~~or~~ Part 11 (commencing with Section 23001), *or Part 12*
40 *(commencing with Section 27001).*

1 (B) Any tax-related computer software source code acquired or
2 developed by the taxpayer or related person primarily for internal
3 use by the taxpayer or that person rather than for commercial
4 distribution.

5 (C) Any communications between the owner of the tax-related
6 computer software source code and the taxpayer or related persons.

7 (D) Any tax-related computer software source code which is
8 required to be provided or made available pursuant to any other
9 provision of this part, Part 10 (commencing with Section 17001),
10 Part 10.7 (commencing with Section 21001), ~~or~~ Part 11
11 (commencing with Section 23001), *or Part 12 (commencing with*
12 *Section 27001).*

13 (3) For purposes of paragraph (1), the Franchise Tax Board shall
14 be treated as meeting the requirements of subparagraphs (A) and
15 (B) of that paragraph if all of the following apply:

16 (A) The Franchise Tax Board determines that it is not feasible
17 to determine the correctness of an item without access to the
18 computer software executable code and associated data described
19 in clause (ii) of subparagraph (A) of paragraph (1).

20 (B) The Franchise Tax Board makes a formal request to the
21 taxpayer for the code and data and to the owner of the computer
22 software source code for the executable code.

23 (C) The code and data are not provided within 180 days of that
24 request.

25 (4) In any proceeding brought under Article 2 (commencing
26 with Section 1180) of Chapter 2 of Part 1 of Division 3 of Title 2
27 of the Government Code to enforce a subpoena issued under the
28 authority of this subdivision, the court shall, at the request of any
29 party, hold a hearing to determine whether the applicable
30 requirements of this section have been met.

31 (c) (1) In any court proceeding to enforce a subpoena for any
32 portion of software, the court may receive evidence and issue any
33 order necessary to prevent the disclosure of trade secrets or other
34 confidential information with respect to that software, including
35 requiring that any information be placed under seal to be opened
36 only as directed by the court.

37 (2) Notwithstanding any other provision of this section, and in
38 addition to any protections ordered pursuant to paragraph (1), in
39 the case of software that comes into the possession or control of

1 the Franchise Tax Board in the course of any examination with
2 respect to any taxpayer, all of the following shall apply:

3 (A) The software may be used only in connection with the
4 examination of that taxpayer's return, any protest or appeal by the
5 taxpayer, any judicial proceeding and any appeals therefrom, or
6 any inquiry into any offense connected with the administration or
7 enforcement of this part, Part 10 (commencing with Section
8 17001), Part 10.7 (commencing with Section 21001), ~~or~~ Part 11
9 (commencing with Section 23001), *or Part 12 (commencing with*
10 *Section 27001).*

11 (B) The Franchise Tax Board shall provide, in advance, to the
12 taxpayer and the owner of the software a written list of the names
13 of all individuals who will analyze or otherwise have access to the
14 software.

15 (C) (i) The software shall be maintained in a secure area or
16 place, and in the case of computer software source code, shall not
17 be removed from the owner's place of business unless the owner
18 permits, or a court orders, that removal.

19 (ii) For purposes of clause (i), the owner shall make available
20 any necessary equipment or materials for analysis of computer
21 software source code required to be conducted on the owner's
22 premises.

23 (D) The software may not be copied except as necessary to
24 perform an analysis, and the Franchise Tax Board shall number
25 all copies made and certify in writing that no other copies have
26 been or will be made.

27 (E) At the end of the period during which the software may be
28 used under subparagraph (A), both of the following apply:

29 (i) The software and all copies thereof shall be returned to the
30 person from whom they were obtained and any copies thereof
31 made under subparagraph (D) on the hard drive of a machine or
32 other mass storage device shall be permanently deleted.

33 (ii) The Franchise Tax Board shall obtain from any person who
34 analyzes or otherwise had access to that software a written
35 certification under penalty of perjury that all copies and related
36 materials have been returned and that no copies were made of
37 them.

38 (F) The software may not be decompiled or disassembled.

39 (G) (i) The Franchise Tax Board shall provide to the taxpayer
40 and the owner of any interest in the software, as the case may be,

1 a written agreement, between the Franchise Tax Board and any
2 person who is not an officer or employee of the State of California
3 and who will analyze or otherwise have access to that software,
4 which provides that the person agrees not to do either of the
5 following:

6 (I) Disclose the software to any person other than persons to
7 whom the information could be disclosed for tax administration
8 purposes under Section 19542.

9 (II) Participate for two years in the development of software
10 which is intended for a similar purpose as the software examined.

11 (ii) The owner of any interest in the software shall be considered
12 a party to any agreement described in clause (i).

13 (H) The software shall be treated as return information for
14 purposes of Section 19542.

15 (d) For purposes of this section:

16 (1) "Software" includes computer software source code and
17 computer software executable code.

18 (2) "Computer software source code" means all of the following:

19 (A) The code written by a programmer using a programming
20 language which is comprehensible to appropriately trained persons
21 and is not capable of directly being used to give instructions to a
22 computer.

23 (B) Related programmers' notes, design documents, memoranda,
24 and similar documentation.

25 (C) Related customer communications.

26 (3) "Computer software executable code" means both of the
27 following:

28 (A) Any object code, machine code, or other code readable by
29 a computer when loaded into its memory and used directly by the
30 computer to execute instructions.

31 (B) Any related user manuals.

32 (4) "Owner" includes, with respect to any software, the
33 developer of the software.

34 (5) A person shall be treated as related to another person if the
35 persons are related persons under Section 267 or 707(b) of the
36 Internal Revenue Code.

37 (6) "Tax-related computer software source code" means the
38 computer source code for any computer software program intended
39 for accounting, tax return preparation or compliance, or tax
40 planning.

(e) This section and Section 19542.3 shall not apply to any software acquired or developed for internal use by the Franchise Tax Board.

(f) This section shall apply to subpoenas issued, and software acquired, after the effective date of the act adding this section. In the case of any software acquired on or before the effective date of the act adding this section, the requirements of paragraph (2) of subdivision (a) shall apply after the 90th day after the effective date of the act adding this section. The preceding sentence shall not apply to the requirement under clause (ii) of subparagraph (G) of paragraph (2) of subdivision (c).

SEC. 119. Section 19512 of the Revenue and Taxation Code is amended to read:

19512. Any person acting in a fiduciary capacity shall assume the duties and, upon giving notice to the Franchise Tax Board, shall assume the rights and privileges of the taxpayers in respect of any tax, additions to tax, penalties, and interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part except as otherwise specifically provided, until he or she gives notice that his or her fiduciary has terminated. He or she shall give notice under this section pursuant to rules and regulations prescribed by the Franchise Tax Board.

SEC. 120. Section 19521 of the Revenue and Taxation Code is amended to read:

19521. (a) The rate established under this section (referred to in other code sections as “the adjusted annual rate”) shall be determined in accordance with Section 6621 of the Internal Revenue Code, except that:

(1) (A) For taxpayers other than corporations, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(B) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning before July 1, 2002, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(C) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning on or after July 1, 2002, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be the lesser of 5 percent or the bond equivalent rate of 13-week United States Treasury bills, determined as follows:

(i) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall be utilized in determining the appropriate rate for the following July 1 to December 31, inclusive. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of 1 percent, that rate shall be increased to the next highest full percent).

(ii) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall be utilized in determining the appropriate rate for the following January 1 to June 30, inclusive. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of 1 percent, that rate shall be increased to the next highest full percent).

(2) The determination specified in Section 6621(b) of the Internal Revenue Code shall be modified to be determined semiannually as follows:

(A) The rate for January shall apply during the following July through December, and

(B) The rate for July shall apply during the following January through June.

(b) (1) For purposes of this part, Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, and any other provision of law referencing this method of computation, in computing the amount of any interest required to be paid by the state or by the taxpayer, or any other amount determined by reference to that amount of interest, that interest and that amount shall be compounded daily.

(2) Paragraph (1) shall not apply for purposes of computing the amount of any addition to tax under Section 19136 or 19142.

(c) Section 6621(c) of the Internal Revenue Code, relating to increase in underpayment rate for large corporate underpayments, is modified as follows:

(1) The applicable date shall be the 30th day after the earlier of either of the following:

(A) The date on which the proposed deficiency assessment is issued.

(B) The date on which the notice and demand is sent.

(2) This subdivision shall apply for purposes of determining interest for periods after December 31, 1991.

(3) Section 6621(c)(2)(B)(iii) of the Internal Revenue Code shall apply for purposes of determining interest for periods after December 31, 1998.

(d) Section 6621(d) of the Internal Revenue Code, relating to the elimination of interest on overlapping periods of tax overpayments and underpayments, shall not apply.

SEC. 121. Section 19525 of the Revenue and Taxation Code is amended to read:

19525. The Franchise Tax Board, under regulations prescribed by the Franchise Tax Board, may establish a reward program for information resulting in the identification of underreported or unreported income subject to taxes imposed by Part 10 (commencing with Section 17001)-~~or~~, Part 11 (commencing with Section 23001), *or Part 12 (commencing with Section 27001)*. Any reward may not exceed 10 percent of the taxes collected as a result of the information provided. Any person employed by or under contract with any state or federal tax collection agency shall not be eligible for a reward provided for pursuant to this section.

SEC. 122. Section 19533 of the Revenue and Taxation Code is amended to read:

19533. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.

(b) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part, and amounts authorized to be collected under Section 19722.

1 (c) Payment of delinquent wages collected pursuant to the Labor
2 Code.

3 (d) Payment of delinquencies collected under Section 10878.

4 (e) Payment of any amounts due that are referred for collection
5 under Article 5.5 (commencing with Section 19280) of Chapter
6 5.

7 (f) Payment of any amounts that are referred for collection
8 pursuant to Section 62.9 of the Labor Code.

9 (g) Payment of delinquent penalties collected for the Department
10 of Industrial Relations pursuant to the Labor Code.

11 (h) Payment of delinquent fees collected for the Department of
12 Industrial Relations pursuant to the Labor Code.

13 (i) Payment of delinquencies referred by the Student Aid
14 Commission.

15 (j) Payment of any delinquencies referred for collection under
16 Article 7 (commencing with Section 19291) of Chapter 5.

17 (k) Notwithstanding the payment priority established by this
18 section, voluntary payments designated by the taxpayer as payment
19 for a personal income tax liability or as a payment on amounts
20 authorized to be collected under Section 19722, shall not be applied
21 pursuant to this priority, but shall instead be applied as designated.

22 *SEC. 123. Section 19542.1 of the Revenue and Taxation Code*
23 *is amended to read:*

24 19542.1. (a) Except as otherwise provided by this article, it
25 shall be unlawful for any person described in Section 19542 to
26 willfully inspect any confidential information furnished or secured
27 pursuant to this part, Part 10 (commencing with Section 17001),
28 ~~or~~ Part 11 (commencing with Section 23001), *or Part 12*
29 *(commencing with Section 27001)*. For purposes of this section,
30 “inspection” means any examination of confidential information.
31 Any willful unauthorized inspection or unwarranted disclosure or
32 use of confidential information by the persons described in Section
33 19542 is a misdemeanor.

34 (b) The Franchise Tax Board shall notify a taxpayer of any
35 known incidents of willful unauthorized inspection or unwarranted
36 disclosure or use of his or her confidential tax records, but only if
37 criminal charges have been filed for the willful unauthorized
38 inspection or unwarranted disclosure.

39 *SEC. 124. Section 19547 of the Revenue and Taxation Code*
40 *is amended to read:*

19547. In a matter involving tax administration under this part, a return or return information shall be open to inspection by the Attorney General or other legal representatives of the state, if any of the following apply:

(a) The taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability with respect to any tax imposed under Part 10 (commencing with Section 17001) ~~or~~, Part 11 (commencing with Section 23001), *or Part 12 (commencing with Section 27001)*.

(b) The treatment of an item reflected on the return is or may be related to the resolution of an issue in the proceeding or investigation.

(c) The return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer, which affects or may affect, the resolution of an issue in the proceeding or investigation.

In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling adherence to any charitable purposes for which any nonprofit corporation is formed.

SEC. 125. Section 19549 of the Revenue and Taxation Code is amended to read:

19549. For purposes of this article:

(a) "Return" means any tax or information return, or claim for refund required by, or provided for or permitted under, the provisions of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part which is filed with the Franchise Tax Board by, on behalf of, or with respect to any person, estate, or trust, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(b) "Return information" means a taxpayer's identity, the nature, source, or amount of his, her, or its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or

1 collected by the Franchise Tax Board with respect to a return or
2 with respect to the determination of the existence, or possible
3 existence, of liability, or the amount thereof, of any person under
4 Part 10 (commencing with Section 17001), Part 11 (commencing
5 with Section 23001), *Part 12 (commencing with Section 27001)*,
6 or this part for any tax, addition to tax, penalty, interest, fine,
7 forfeiture, or other imposition, or offense.

8 (c) “Taxpayer return information” means return information as
9 defined in subdivision (b) which is filed with, or furnished to, the
10 Franchise Tax Board by or on behalf of the taxpayer to whom the
11 return information relates.

12 (d) “Tax administration” means the administration, management,
13 conduct, direction, and supervision of the execution and application
14 of Part 10 (commencing with Section 17001), Part 10.7
15 (commencing with Section 21001), Part 11 (commencing with
16 Section 23001), *Part 12 (commencing with Section 27001)*, and
17 this part.

18 *SEC. 126. Section 19563 of the Revenue and Taxation Code*
19 *is amended to read:*

20 19563. This article does not prohibit the publication of
21 statistics, so classified as to prevent the identification of particular
22 reports or returns and the items thereof, or the publication of the
23 percentage of dividends paid by any corporation that is deductible
24 by the recipient under Part 11 (commencing with Section 23001)
25 *or Part 12 (commencing with Section 27001)*.

26 *SEC. 127. Section 19565 of the Revenue and Taxation Code*
27 *is amended to read:*

28 19565. (a) (1) If an organization is exempt from taxation
29 under Section 23701 *or Section 27701* for any taxable year, the
30 application filed by the organization with respect to which the
31 Franchise Tax Board made its determination that the organization
32 was entitled to exemption under Section 23701 *or Section 27701*,
33 together with any papers submitted in support of the application,
34 and any letter or other document issued by the Franchise Tax
35 Board, with respect to the application, shall be open to public
36 inspection. After the application of any organization has been
37 opened to public inspection under this subdivision, the Franchise
38 Tax Board shall, on the request of any person with respect to the
39 organization, furnish a statement indicating the section which it
40 has been determined describes the organization.

(2) If an organization is exempt from taxation for any taxable year pursuant to subdivision (c) of Section 23701d *or subdivision (c) of Section 27701d*, any documents submitted to the Franchise Tax Board to verify the organization's federal exemption under Section 501(c)(3) of the Internal Revenue Code, including any copy of the notification issued by the Internal Revenue Service approving the organization's tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code which is submitted by the organization to the Franchise Tax Board, and the acknowledgment letter or other document issued by the Franchise Tax Board, shall be open to public inspection.

(3) Any inspection under paragraph (1) or (2) of this subdivision may be made at times, and in the manner, as the Franchise Tax Board shall by regulation prescribe.

(b) Upon request of the organization submitting any supporting papers described in subdivision (a), the Franchise Tax Board shall withhold from public inspection any information contained therein which it determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if it determines that public disclosure of the information would adversely affect the organization. The Franchise Tax Board shall withhold from public inspection any information contained in supporting papers described in subdivision (a) the public disclosure of which it determines would adversely affect the national defense.

(c) The Franchise Tax Board may impose a reasonable charge for supplying any information the disclosure of which is permitted under this section.

SEC. 128. Section 19566 of the Revenue and Taxation Code is amended to read:

19566. Any information provided to or secured by the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001) ~~or~~, Part 11 (commencing with Section 23001), *or Part 12 (commencing with Section 27001)* may be used by Franchise Tax Board for purposes of administering Section 10878 or Article 6 (commencing with Section 19280) of Chapter 5.

SEC. 129. Section 19570 of the Revenue and Taxation Code is amended to read:

19570. The provisions of Sections 1798.35, 1798.36, 1798.37, and Article 9 (commencing with Section 1798.45) of Chapter 1 of Title 1.8 of the Civil Code shall not be applied, directly or

1 indirectly, to the determination of the existence or possible
2 existence of liability (or the amount thereof) of any person for any
3 tax, penalty, interest, fine, forfeiture, or other imposition or offense
4 to which the provisions of Part 10 (commencing with Section
5 17001), Part 11 (commencing with Section 23001), *Part 12*
6 (*commencing with Section 27001*), or this part apply.

7 *SEC. 130. Section 19591 of the Revenue and Taxation Code*
8 *is amended to read:*

9 19591. (a) Specialized tax services fees shall be imposed upon
10 the following services provided by the board:

11 (1) Installment payment programs.

12 (2) Expedited services for:

13 (A) Corporation *and business entity* revivor requests.

14 (B) Tax clearance certificate requests.

15 (C) Tax-exempt status requests.

16 (D) Limited partnership revival confirmation letter requests.

17 (b) (1) For periods on or after the effective date of this section
18 and prior to January 1, 2006, the Franchise Tax Board shall publish
19 by notice a schedule of specialized tax services fees to be imposed,
20 which notice shall be exempt from the requirements of Chapter
21 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
22 Title 2 of the Government Code. The amounts of these fees under
23 this paragraph shall be calculated in the same general manner as
24 required under paragraph (2).

25 (2) Commencing on January 1, 2006, the amount of the
26 specialized tax services fees shall be established by the board
27 through regulations adopted pursuant to Chapter 3.5 (commencing
28 with Section 11340) of Part 1 of Division 3 of Title 2 of the
29 Government Code, and shall be established in the manner and in
30 the amounts necessary to reimburse the board for the costs of
31 administering the specialized services, including the board's direct
32 and indirect costs for providing specialized tax services.

33 (3) For periods on or after the effective date of this section, and
34 prior to January 1, 2011, the amount of the specialized tax service
35 fee for limited partnership revival confirmation letter requests shall
36 be one hundred dollars (\$100). Commencing on January 1, 2011,
37 the specialized tax service fee for limited partnership revival
38 confirmation letter requests shall be calculated in the same general
39 manner as required under paragraph (2).

1 *SEC. 131. Section 19604 of the Revenue and Taxation Code*
2 *is amended to read:*

3 19604. (a) (1) Except for fees received for services under
4 Section 23305e, all moneys and remittances received by the
5 Franchise Tax Board as amounts imposed under Part 11
6 (commencing with Section 23001), and related penalties, additions
7 to tax, fees, and interest imposed under this part, shall be deposited
8 in a special fund in the State Treasury, to be designated the
9 Corporation Tax Fund. The moneys in the fund shall, upon the
10 order of the Controller, be drawn therefrom for the purpose of
11 making refunds under this part or be transferred into the General
12 Fund. All undelivered refund warrants shall be redeposited into
13 the Corporation Tax Fund upon receipt by the Controller. Fees
14 received for services under Section 23305e shall be treated as
15 reimbursement of the Franchise Tax Board's costs and shall be
16 deposited into the General Fund.

17 (2) *All moneys and remittances received by the Franchise Tax*
18 *Board as amounts imposed under Part 12 (commencing with*
19 *Section 27001), and related penalties, additions to tax, fees, and*
20 *interest imposed under this part, shall be deposited in a special*
21 *fund in the State Treasury, to be designated the Business Net*
22 *Receipts Tax Fund. The moneys in the fund shall, upon the order*
23 *of the Controller, be drawn therefrom for the purpose of making*
24 *refunds under this part or be transferred into the General Fund.*
25 *All undelivered refund warrants shall be redeposited into the*
26 *Business Net Receipts Tax Fund upon receipt by the Controller.*

27 (b) Notwithstanding Section 13340 of the Government Code,
28 all moneys in the Corporation Tax Fund are hereby continuously
29 appropriated, without regard to fiscal year, to the Franchise Tax
30 Board for purposes of making all payments as provided in this
31 section.

32 *SEC. 132. Section 19701 of the Revenue and Taxation Code*
33 *is amended to read:*

34 19701. Any person who does any of the following is liable for
35 a penalty of not more than five thousand dollars (\$5,000):

36 (a) With or without intent to evade any requirement of Part 10
37 (commencing with Section 17001), Part 11 (commencing with
38 Section 23001), *Part 12 (commencing with Section 27001)*, or this
39 part or any lawful requirement of the Franchise Tax Board,
40 repeatedly over a period of two years or more, fails to file any

1 return or to supply any information required, or who, with or
2 without that intent, makes, renders, signs, or verifies any false or
3 fraudulent return or statement, or supplies any false or fraudulent
4 information, resulting in an estimated delinquent tax liability of
5 at least fifteen thousand dollars (\$15,000).

6 (b) Aids, abets, advises, encourages, or counsels any person to
7 evade the tax imposed by Part 10 (commencing with Section
8 17001)~~or~~, Part 11 (commencing with Section 23001), *or Part 12*
9 *(commencing with Section 27001)* by not filing any return or
10 supplying any information required under Part 10 (commencing
11 with Section 17001), Part 11 (commencing with Section 23001),
12 *Part 12 (commencing with Section 27001)*, or this part, or, by
13 making, rendering, signing, or verifying any false or fraudulent
14 return or statement, or by supplying false or fraudulent information.

15 (c) Under this part, is required to pay any estimated tax or tax,
16 who willfully fails to pay that estimated tax or tax, at the time or
17 times required by law or regulations.

18 The penalty shall be recovered in the name of the people in any
19 court of competent jurisdiction. Counsel for the Franchise Tax
20 Board may, upon request of the district attorney or other
21 prosecuting attorney, assist the prosecuting attorney in presenting
22 the law or facts to recover the penalty at the trial of a criminal
23 proceeding for violation of this section.

24 That person is also guilty of a misdemeanor and shall upon
25 conviction be fined not to exceed five thousand dollars (\$5,000)
26 or be imprisoned not to exceed one year, or both, at the discretion
27 of the court, together with costs of investigation and prosecution.
28 The preceding sentence shall not apply to any person who is
29 mentally incompetent, or suffers from dementia, Alzheimer's
30 disease, or similar condition.

31 (d) For purposes of subdivision (a), the president of a
32 corporation, or the chief operating officer, is the person presumed
33 to be responsible for filing any return or supplying information
34 required from that corporation.

35 *SEC. 133. Section 19702 of the Revenue and Taxation Code*
36 *is amended to read:*

37 19702. The prosecutor may, with the consent of the Franchise
38 Tax Board, compromise any penalty for which he or she may bring
39 action under this chapter. The penalties provided by this chapter
40 are additional to all other penalties provided in Part 10

(commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part.

SEC. 134. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law~~or~~, the Corporation Tax Law, *or the Business Net Receipts Tax Law*, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, or compromise under Section 19443, or offer of that compromise, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a corporation, the fifty thousand dollars (\$50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars (\$200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

(e) The changes made to this section by the act adding this subdivision apply to offers made on or after January 1, 1999.

SEC. 135. Section 19706 of the Revenue and Taxation Code is amended to read:

19706. Any person or any officer or employee of any corporation who, within the time required by or under the provisions of this part, willfully fails to file any return or to supply any information with intent to evade any tax imposed by Part 10 (commencing with Section 17001)-~~or~~, Part 11 (commencing with Section 23001), *or Part 12 (commencing with Section 27001)*, or who, willfully and with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information, is punishable by imprisonment in

1 the county jail not to exceed one year, or in the state prison, or by
2 fine of not more than twenty thousand dollars (\$20,000), or by
3 both the fine and imprisonment, at the discretion of the court,
4 together with the costs of investigation and prosecution.

5 *SEC. 136. Section 19712 of the Revenue and Taxation Code*
6 *is amended to read:*

7 19712. Any tax preparer, as defined in subdivision (b) of
8 Section 19169, who endorses or otherwise negotiates (directly or
9 through an agent) any warrant made in respect of the taxes imposed
10 by Part 10 (commencing with Section 17001)—~~or~~, Part 11
11 (commencing with Section 23001), *or Part 12 (commencing with*
12 *Section 27001)* which is issued to a taxpayer (other than the tax
13 preparer) shall, in addition to other penalties provided by law, be
14 guilty of a misdemeanor, and upon conviction thereof, shall be
15 fined not more than one thousand dollars (\$1,000) or imprisoned
16 not more than one year, or both, together with the costs of
17 prosecution.

18 This section shall not apply where the tax preparer has advanced
19 the taxpayer an amount of money equal to or greater than the
20 amount of the taxpayer's tax refund.

21 *SEC. 137. Section 19772 of the Revenue and Taxation Code*
22 *is amended to read:*

23 19772. (a) Section 6707A of the Internal Revenue Code,
24 relating to penalty for failure to include reportable transactions
25 information with a return, shall apply, except as otherwise
26 provided.

27 (b) The penalty amounts in Section 6707A(b) of the Internal
28 Revenue Code shall not apply, and in lieu thereof, the following
29 shall apply:

30 (1) Except as provided in paragraph (2), the amount of the
31 penalty shall be fifteen thousand dollars (\$15,000).

32 (2) The amount of the penalty with respect to a listed transaction
33 shall be thirty thousand dollars (\$30,000).

34 (c) (1) Section 6707A(c)(1) of the Internal Revenue Code is
35 modified to include reportable transactions within the meaning of
36 paragraph (3) of subdivision (a) of Section 18407.

37 (2) Section 6707A(c)(2) of the Internal Revenue Code is
38 modified to include listed transactions within the meaning of
39 paragraph (4) of subdivision (a) of Section 18407.

1 (d) The penalty under this section only applies to taxpayers with
2 taxable income greater than two hundred thousand dollars
3 (\$200,000).

4 (e) Section 6707A(e) of the Internal Revenue Code, relating to
5 a penalty reported to the Securities and Exchange Commission,
6 shall not apply.

7 (f) Section 6707A(d) of the Internal Revenue Code, relating to
8 the authority to rescind a penalty, shall not apply, and in lieu
9 thereof, the following shall apply:

10 (1) The Chief Counsel of the Franchise Tax Board may rescind
11 all or any portion of any penalty imposed by this section with
12 respect to any violation if all of the following apply:

13 (A) The violation is with respect to a reportable transaction
14 other than a listed transaction.

15 (B) The person on whom the penalty is imposed has a history
16 of complying with the requirements of this part and Part 10
17 (commencing with Section 17001)-~~or~~, Part 11 (commencing with
18 Section 23001), *or Part 12 (commencing with Section 27001)*.

19 (C) It is shown that the violation is due to an unintentional
20 mistake of fact.

21 (D) Imposing the penalty would be against equity and good
22 conscience.

23 (E) Rescinding the penalty would promote compliance with the
24 requirements of this part and Part 10 (commencing with Section
25 17001)-~~or~~, Part 11 (commencing with Section 23001), *or Part 12*
26 *(commencing with Section 27001)* and effective tax administration.

27 (2) The exercise of authority under paragraph (1) shall be at the
28 sole discretion of the Chief Counsel of the Franchise Tax Board
29 and may not be delegated.

30 (3) Notwithstanding any other law or rule of law, any
31 determination under this subdivision may not be reviewed in any
32 administrative or judicial proceeding.

33 (g) Article 3 (commencing with Section 19031) of Chapter 4
34 (relating to deficiency assessments) shall not apply with respect
35 to the assessment or collection of any penalty imposed under this
36 section.

37 (h) The penalty imposed by this section is in addition to any
38 penalty imposed under Part 10 (commencing with Section 17001),
39 Part 11 (commencing with Section 23001), *Part 12 (commencing*
40 *with Section 27001)*, or this part.

1 *SEC. 138. Section 19777 of the Revenue and Taxation Code*
2 *is amended to read:*

3 19777. (a) If a taxpayer has been contacted by the Franchise
4 Tax Board regarding an abusive tax avoidance transaction, and
5 has a deficiency attributable to an abusive tax avoidance
6 transaction, there shall be added to the tax an amount equal to 100
7 percent of the interest payable under Section 19101 for the period
8 beginning on the last date prescribed by law for the payment of
9 that tax (determined without regard to extensions) and ending on
10 the date the notice of proposed assessment is mailed.

11 (b) For purposes of this section, “abusive tax avoidance
12 transaction” means any of the following:

13 (1) A tax shelter as defined in Section 6662(d)(2)(C) of the
14 Internal Revenue Code. For purposes of this chapter, Section
15 6662(d)(2)(C) of the Internal Revenue Code is modified by
16 substituting the phrase “income or franchise tax” for “Federal
17 income tax.”

18 (2) A reportable transaction, as defined in Section 6707A(c)(1)
19 of the Internal Revenue Code, with respect to which the
20 requirements of Section 6664(d)(2)(A) of the Internal Revenue
21 Code are not met.

22 (3) A listed transaction, as defined in Section 6707A(c)(2) of
23 the Internal Revenue Code.

24 (4) A gross misstatement, within the meaning of Section
25 6404(g)(2)(D) of the Internal Revenue Code.

26 (5) Any transaction to which Section 19774 applies.

27 (c) The penalty imposed by this section is in addition to any
28 other penalty imposed under Part 10 (commencing with Section
29 17001), Part 11 (commencing with Section 23001), *Part 12*
30 (*commencing with Section 27001*), or this part.

31 (d) (1) If a taxpayer files an amended return reporting an
32 abusive tax avoidance transaction, described in subdivision (b),
33 after the taxpayer is contacted by the Franchise Tax Board
34 regarding that abusive tax avoidance transaction but before a notice
35 of proposed assessment is issued under Section 19033, then the
36 amount of the penalty under this section shall be 50 percent of the
37 interest payable under Section 19101 with respect to the amount
38 of any additional tax reflected in the amended return attributable
39 to that abusive tax avoidance transaction.

(2) If a notice of proposed assessment under Section 19033, with respect to an abusive tax avoidance transaction as described in subdivision (a), is issued after the amended return described in paragraph (1) is filed, the penalty imposed pursuant to subdivision (a) shall be applicable to the additional tax reflected in the notice of proposed assessment attributable to that abusive tax avoidance transaction in excess of the additional tax shown on the amended return.

(e) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after the effective date of that act and to amended returns filed more than 90 days after that effective date with respect to taxable years for which the statute of limitations for mailing a notice of proposed assessment has not expired as of that date.

SEC. 139. Section 19801 of the Revenue and Taxation Code is amended to read:

19801. In the determination of any issue of law or fact under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), *Part 12 (commencing with Section 27001)*, or this part, neither the Franchise Tax Board nor any officer or agency having any administrative duties under this part nor any court is bound by the determination of any other officer or administrative agency of the state.

SEC. 140. Section 23005 is added to the Revenue and Taxation Code, to read:

23005. (a) *Except as otherwise provided in Part 12 (commencing with Section 27001), this part shall cease to be operative for taxable years beginning on or after January 1, 2013.*

SEC. 141. Part 12 (commencing with Section 27001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 12. BUSINESS NET RECEIPTS TAX LAW

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

27001. *This part shall be known and may be cited as the Business Net Receipts Tax Law.*

1 27003. Whenever this part refers to “regulations of the
2 Franchise Tax Board,” or makes similar reference, the reference
3 authorizes the Franchise Tax Board to make rules and regulations
4 as to the subject matter concerning that reference.

5
6 Article 2. Definitions
7

8 27011. Except where the context otherwise requires, the
9 definitions given in this chapter govern the construction of this
10 part.

11 27013. “Fiscal year” means an accounting period of 12 months
12 or less ending on the last day of any month other than December.

13 27014. “Paid or incurred” and “paid or accrued” shall be
14 construed according to the method of accounting upon the basis
15 of which net receipts is computed.

16 27015. “State” means any state of the United States, the
17 District of Columbia, the Commonwealth of Puerto Rico, any
18 territory or possession of the United States, and any foreign
19 country or political subdivision thereof.

20 27016. “Counsel for the Franchise Tax Board” means attorney
21 or attorneys appointed or employed by the Franchise Tax Board
22 and acting subject to the approval and under the supervision of
23 the Attorney General.

24 27017. The term “tax” means the tax imposed under Chapter
25 2 (commencing with Section 27101).

26 27018. “Taxpayer” means any person subject to the tax
27 imposed under Chapter 2 (commencing with Section 27101).

28 27019. (a) For purposes of the tax imposed under Chapter 2
29 (commencing with Section 27101), “business entity” means any
30 entity engaged in a trade or business, including an incorporated
31 entity, an association, a partnership, including an eligible business
32 entity classified as a partnership for federal income tax purposes,
33 a business trust, and a business owned by an individual and
34 operated as a sole proprietorship.

35 (b) For purposes of this part, the classification of a business
36 entity as a partnership or an association taxable as a corporation
37 shall be the same as the classification of that entity for federal
38 income tax purposes. If the separate existence of an eligible
39 business entity is disregarded for federal income tax purposes, the

1 *separate existence of that business entity shall not be disregarded*
2 *for purposes of this part.*

3 *(c) The following entities shall not be subject to the tax imposed*
4 *under Chapter 2 (commencing with Section 27101):*

5 *(1) An estate, except to the extent the estate relates to a business*
6 *owned by an individual and operated as a sole proprietorship.*

7 *(2) A trust, other than a business trust.*

8 27020. *“Bank” includes national banking associations, and*
9 *also includes any “bank” operated by any receiver, liquidator,*
10 *referee, trustee, or other officers or agents appointed by any court,*
11 *or an assignee for the benefit of creditors.*

12 27021. *Receipts derived from or attributable to sources within*
13 *this state includes receipts from tangible or intangible property*
14 *located or having a situs in this state and receipts from any activity*
15 *carried on in this state, regardless of whether carried on in*
16 *intrastate, interstate, or foreign commerce.*

17 27022. *For purposes of the tax imposed under this part,*
18 *“taxable year” means all of the following:*

19 *(a) The calendar year or the fiscal year for which the tax is*
20 *payable.*

21 *(b) The calendar year or fiscal year upon the basis of which the*
22 *net receipts are computed.*

23 *(c) A period of 12 months or less.*

24 27023. *(a) Unless otherwise specifically provided, the terms*
25 *“Internal Revenue Code,” “Internal Revenue Code of 1954,” or*
26 *“Internal Revenue Code of 1986,” for purposes of this part, mean*
27 *Title 26 of the United States Code, including all amendments*
28 *thereto, as applicable for federal purposes for the applicable*
29 *taxable year.*

30 27024. *If any chapter, article, section, subdivision, paragraph,*
31 *subparagraph, clause, subclause, sentence, or phrase of this part*
32 *that is reasonably separable from the remaining provisions of this*
33 *part, or the application thereof to any person, taxpayer, or*
34 *circumstance, is for any reason determined unconstitutional, that*
35 *determination shall not affect the remainder of this part, nor shall*
36 *the application of the provision to any other person, taxpayer, or*
37 *circumstance be affected thereby.*

38 27025. *Unless otherwise specifically provided therein, the*
39 *provisions of any act:*

1 (a) That affect the imposition or computation of tax, penalties,
2 or the allowance of credits against the tax, shall be applied to
3 taxable years beginning on or after January 1 of the year in which
4 the act takes effect.

5 (b) That otherwise affect the provisions of this part shall be
6 applied on and after the date the act takes effect.

7 27026. Provisions in other codes or statutes that are related
8 to this part include all of the following:

9 (a) Sections 15700 to 15702.1, inclusive, of the Government
10 Code, relating to the Franchise Tax Board.

11 (b) Part 10 (commencing with Section 17001), relating to the
12 Personal Income Tax Law.

13 (c) Part 10.2 (commencing with Section 18401), relating to the
14 administration of franchise and income taxes.

15 (d) Part 10.7 (commencing with Section 21001), relating to the
16 Taxpayers' Bill of Rights.

17 (e) Part 11 (commencing with Section 23001), relating to the
18 Corporation Tax Law.

19
20 *CHAPTER 2. THE BUSINESS NET RECEIPTS TAX*

21
22 *Article 1. Definitions and General Provisions*

23
24 27101. (a) A taxpayer is doing business in this state for a
25 taxable year if any of the following applies:

26 (1) The taxpayer is organized or commercially domiciled in this
27 state.

28 (2) Sales, as defined in subdivision (e) of Section 28120, of the
29 taxpayer in this state exceed the lesser of five hundred thousand
30 dollars (\$500,000) or 25 percent of the taxpayer's total sales. For
31 purposes of this paragraph:

32 (A) Sales of the taxpayer include sales by an agent or
33 independent contractor of the taxpayer.

34 (B) Sales in this state shall be determined using the rules for
35 assigning sales under Sections 28135 and 28136 and the
36 regulations thereunder, as modified by regulations under Section
37 28137.

38 (3) The real property and tangible personal property of the
39 taxpayer in this state exceed the lesser of fifty thousand dollars
40 (\$50,000) or 25 percent of the taxpayer's total real property and

1 *tangible personal property. The value of real and tangible personal*
2 *property and the determination of whether property is in this state*
3 *shall be determined using the rules contained in Sections 28129*
4 *to 28131, inclusive, and the regulations thereunder, as modified*
5 *by regulations under Section 28137.*

6 (4) *The amount paid in this state by the taxpayer for*
7 *compensation, as defined in subdivision (c) of Section 29120,*
8 *exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent*
9 *of the total compensation paid by the taxpayer. Compensation in*
10 *this state shall be determined using the rules for assigning payroll*
11 *contained in Section 28133 and the regulations thereunder, as*
12 *modified by regulations under Section 28137.*

13 (b) (1) *The Franchise Tax Board shall annually revise the*
14 *amounts in paragraphs (2), (3), and (4) of subdivision (b) in*
15 *accordance with subdivision (h) of Section 17041.*

16 (2) *For purposes of the adjustment required by paragraph (1),*
17 *subdivision (h) of Section 17041 shall be applied by substituting*
18 *“2012” in lieu of “1988.”*

19 (c) *The sales, property, and payroll of the taxpayer include the*
20 *taxpayer’s pro rata or distributive share from pass-through entities.*
21 *For purposes of this subdivision, “pass-through entities” means*
22 *a partnership or an “S” corporation.*

23 27102. *The tax imposed under this chapter shall attach whether*
24 *a taxpayer has a taxable year of 12 months or less.*

25 27103. *A business entity shall not be subject to the taxes*
26 *imposed by this chapter if the business entity did no business in*
27 *this state during the taxable year and the taxable year was 15 days*
28 *or less.*

29
30 *Article 2. Tax on Business Entities Other than Banks and*
31 *Financial Business Entities*
32

33 27151. (a) *With the exception of banks and financial business*
34 *entities, each business entity doing business within the limits of*
35 *this state and not expressly exempted from taxation by the*
36 *California Constitution or by this part, shall annually pay to the*
37 *state, for the privilege of exercising its franchise within this state,*
38 *a tax computed at the rate of 5.8percent of its net receipts for the*
39 *taxable year.*

Article 3. Tax on Financial Institutions

27161. (a) Except as otherwise provided herein, each financial institution doing business within this state and not expressly exempted from taxation by the California Constitution or this part, shall annually pay to the state, for the privilege of exercising its franchise within this state, a tax computed at the rate of 5.8 percent of its net business receipts for the taxable year.

27162. The tax imposed under this part upon financial institutions is in lieu of all other taxes and licenses, state, county, and municipal, upon those financial institutions except taxes upon their real property, local utility user taxes, sales and use taxes, state energy resources surcharge, state emergency telephone users surcharge, and motor vehicle and other vehicle registration license fees, and any other tax or license fee imposed by the state upon vehicles, motor vehicles, or the operation thereof.

27163. (a) For purposes of this part, “financial institution” means:

(1) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended.

(2) A national bank organized and existing as a national bank association pursuant to the National Bank Act (12 U.S.C. Sec. 21 et seq.).

(3) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(b)(1)).

(4) Any bank or thrift institution incorporated or organized under the laws of any state.

(5) Any corporation organized under Sections 611 to 631, inclusive, of the United States Code.

(6) Any agency or branch of a foreign depository as defined in Section 3101 of the United States Code.

(7) A state credit union the loan assets of which exceed fifty million dollars (\$50,000,000) as of the first day of its taxable year.

(8) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

1 (9) Any corporation whose voting stock is more than 50 percent
2 owned, directly or indirectly, by any person or business entity
3 described in paragraphs (1) to (8), inclusive, other than an
4 insurance company.

5 (10) A corporation or other business entity that derives more
6 than 50 percent of its total gross income for financial accounting
7 purposes from finance leases. For purposes of this paragraph, a
8 “finance lease” means any lease transaction that is the functional
9 equivalent of an extension of credit and that transfers substantially
10 all of the benefits and risks incident to the ownership of property.
11 “Finance lease” includes any “direct financing lease” or
12 “leverage lease” that meets the criteria of Financial Accounting
13 Standards Board Statement No. 13, “Accounting for Leases” or
14 any other lease that is accounted for as a financing by a lessor
15 under generally accepted accounting principles. For this
16 classification to apply, the average of the gross income in the
17 current taxable year and immediately preceding two taxable years
18 shall satisfy the more than 50 percent requirement and gross
19 income from incidental or occasional transactions shall be
20 disregarded.

21 (11) Any other person or business entity, other than an insurance
22 company, that derives more than 50 percent of its gross income
23 from activities that a person described in paragraphs (2) to (8),
24 inclusive, and paragraph (10) is authorized to transact. For
25 purposes of this paragraph, the computation of gross income shall
26 not include income from nonrecurring, extraordinary items.

27 (12) The Franchise Tax Board is authorized to exclude any
28 person from the application of paragraph (11) upon the person
29 proving, by clear and convincing evidence, that the
30 income-producing activity of the person is not in substantial
31 competition with those persons described in paragraphs (2) to (8),
32 inclusive, and paragraph (10).

34 Article 3.5. Suspension and Revivor

35
36 27191. Except for purposes of filing an application for exempt
37 status or amending the articles of incorporation or organization
38 as necessary either to perfect that application or to set forth a new
39 name, the powers, rights, and privileges of a domestic limited
40 liability taxpayer may be suspended, and the exercise of the powers,

rights, and privileges of a foreign limited liability taxpayer in this state may be forfeited, if any of the following conditions occur:

(a) If any tax, penalty, or interest, or any portion thereof, that is due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2 (commencing with Section 18401), or under this part, either at the time the return is required to be filed or on or before the 15th day of the ninth month following the close of the taxable year, is not paid on or before 6 p.m. on the last day of the 12th month after the close of the taxable year.

(b) If any tax, penalty, or interest, or any portion thereof, due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2 (commencing with Section 18401), or under this part, upon notice and demand from the Franchise Tax Board, is not paid on or before 6 p.m. on the last day of the 11th month following the due date of the tax.

(c) If any liability, or any portion thereof, that is due and payable under Article 7 (commencing with Section 19131) of Chapter 4 of Part 10.2 (commencing with Section 18401), is not paid on or before 6 p.m. on the last day of the 11th month following the date that the tax liability is due and payable.

27192. Except for the purposes of filing an application for exempt status or amending the articles of incorporation or organization as necessary either to perfect that application or to set forth a new name, the powers, rights, and privileges of a domestic limited liability taxpayer may be suspended, and the exercise of the powers, rights, and privileges of a foreign limited liability taxpayer in this state may be forfeited, if a taxpayer fails to file a tax return required by this part or Part 10.2 (commencing with Section 18401).

27193. Sections 27191, 27192, and 27775 shall apply to a foreign limited liability taxpayer only if the taxpayer is qualified to do business in this state. A taxpayer that is required under Section 2105 of the Corporations Code to qualify to do business shall not be deemed to have qualified to do business for purposes of this article unless the taxpayer has qualified with the Secretary of State.

27194. (a) Forfeiture or suspension of a limited liability taxpayer's powers, rights, and privileges pursuant to Section 27191, 27192, or 27775 shall occur and become effective only as expressly provided in this section in conjunction with Section

1 21020, which requires notice prior to the suspension of a
2 taxpayer's corporate powers, rights, and privileges.

3 (b) The notice requirements of Section 21020 shall also apply
4 to any forfeiture of a taxpayer's corporate powers, rights, and
5 privileges pursuant to Section 27191, 27192, or 27775 and to any
6 voidability pursuant to subdivision (d) of Section 27196.

7 (c) The Franchise Tax Board shall transmit the names of
8 taxpayers to the Secretary of State as to which the suspension or
9 forfeiture provisions of Section 27191, 27192, or 27775 are or
10 become applicable, and the suspension or forfeiture therein
11 provided for shall thereupon become effective. The certificate of
12 the Secretary of State shall be prima facie evidence of the
13 suspension or forfeiture.

14 (d) If a taxpayer's powers, rights, and privileges are forfeited
15 or suspended pursuant to Section 27191, 27192, or 27775, without
16 limiting any other consequences of the forfeiture or suspension,
17 the taxpayer shall not be entitled to sell, transfer, or exchange real
18 property in this state during the period of forfeiture or suspension.

19 27195. Notwithstanding Section 27191 or 27192, any limited
20 liability entity that transacts business or receives business net
21 receipts within the period of its suspension or forfeiture shall be
22 subject to tax under this chapter.

23 27196. (a) Every contract made in this state by a limited
24 liability taxpayer during the time that the taxpayer's powers, rights,
25 and privileges are suspended or forfeited pursuant to Section
26 27191, 27192, or 27775 shall, subject to Section 27197, be voidable
27 at the instance of any party to the contract other than the limited
28 liability taxpayer.

29 (b) If a foreign limited liability taxpayer that neither is qualified
30 to do business nor has a business entity account number from the
31 Franchise Tax Board, fails to file a tax return required under this
32 part, any contract made in this state by that taxpayer during the
33 applicable period specified in subdivision (c) shall, subject to
34 Section 27197, be voidable at the instance of any party to the
35 contract other than the taxpayer.

36 (c) For purposes of subdivision (b), the applicable period shall
37 be the period beginning on January 1, 2013, or the first day of the
38 taxable year for which the taxpayer has failed to file a return,
39 whichever is later, and ending on the earlier of the date the
40 taxpayer qualified to do business in this state or the date the

1 taxpayer obtained a business entity account number from the
2 Franchise Tax Board.

3 (d) If a taxpayer fails to file a tax return required under this
4 part, to pay any tax or other amount owing to the Franchise Tax
5 Board under this part or to file any statement or return required
6 under Section 27772 or 27774, within 60 days after the Franchise
7 Tax Board mails a written demand, any contract made in this state
8 by the taxpayer during the period beginning at the end of the
9 60-day demand period and ending on the date relief is granted
10 under Section 27198.1, or the date the taxpayer qualifies to do
11 business in this state, whichever is earlier, shall be voidable at the
12 instance of any party to the contract other than the taxpayer. This
13 subdivision shall apply only to a taxpayer if the taxpayer has a
14 corporate account number from the Franchise Tax Board, but has
15 not qualified to do business under Section 2105 of the Corporations
16 Code. In the case of a taxpayer that has not complied with the
17 60-day demand, the taxpayer's name, Franchise Tax Board
18 corporate account number, date of the demand, date of the first
19 day after the end of the 60-day demand period, and the fact that
20 the taxpayer did not within that period pay the tax or other amount
21 or file the statement or return, as the case may be, shall be a matter
22 of public record.

23 27197. A party that has the right to declare a contract to be
24 voidable pursuant to Section 27196 may exercise that right only
25 in a lawsuit brought by either party with respect to the contract
26 in a court of competent jurisdiction and the rights of the parties
27 to the contract shall not be affected by Section 27196 except to the
28 extent expressly provided by a final judgment of the court, which
29 judgment shall not be issued unless the taxpayer is allowed a
30 reasonable opportunity to cure the voidability under Section
31 27198.1. If the court finds that the contract is voidable under
32 Section 27196, the court shall order the contract to be rescinded.
33 However, in no event shall the court order rescission of a
34 taxpayer's contract unless the taxpayer receives full restitution of
35 the benefits provided by the taxpayer under the contract.

36 27198. Any taxpayer that has suffered the suspension or
37 forfeiture provided for in Section 27191 or 27192 may be relieved
38 upon making application in writing to the Franchise Tax Board
39 and upon the filing of all tax returns required under this part, and
40 the payment of the tax, additions to tax, penalties, interest, and

1 any other amounts for nonpayment of which the suspension or
2 forfeiture occurred, together with all other taxes, additions to tax,
3 penalties, interest, and any other amounts due under this part, and
4 upon the issuance by the Franchise Tax Board of a certificate of
5 revivor. Application for the certificate on behalf of any taxpayer
6 that has suffered suspension or forfeiture may be made by any
7 stockholder or creditor, by a majority of the surviving trustees or
8 directors, by an officer, or by any other person who has interest
9 in the relief from suspension or forfeiture.

10 27198.1. (a) A taxpayer may make an application to the
11 Franchise Tax Board for relief from the voidability provisions of
12 Section 27196. To be relieved from voidability, the taxpayer shall
13 do all of the following:

14 (1) Provide the Franchise Tax Board with an application for
15 relief from contract voidability in a form and manner prescribed
16 by the Franchise Tax Board.

17 (2) Include on the application the period for which relief is
18 requested in accordance with subdivision (b).

19 (3) File any tax returns required to be filed under this part and
20 Part 10.2 (commencing with Section 18401) with the Franchise
21 Tax Board, including returns for the period for which relief is
22 requested.

23 (4) Pay any tax, additions to tax, penalties, interest, and any
24 other amounts owing to the Franchise Tax Board, including any
25 liability attributable to the period for which relief is requested.

26 (5) Pay any penalty imposed under subdivision (b) for the period
27 for which relief is requested.

28 (6) In the case of a taxpayer that applies for and enters into an
29 approved voluntary disclosure agreement in accordance with
30 Article 8 (commencing with Section 19191) of Chapter 4 of Part
31 10.2, for purposes of this section, the taxpayer shall be considered
32 to have met the requirements of paragraphs (3), (4), and (5) if the
33 taxpayer fulfills to the satisfaction of the Franchise Tax Board all
34 the specifications of the voluntary disclosure agreement within the
35 meaning of paragraph (2) of subdivision (d) of Section 19191 and
36 if the Franchise Tax Board has not found that any of the
37 circumstances described in Section 19194 has rendered the
38 voluntary disclosure agreement null and void.

39 (b) (1) Except as provided in paragraph (2), both of the
40 following shall apply:

1 (A) *The period for which relief is requested shall begin on the*
2 *date that one of the taxpayer's taxable years begins and ends on*
3 *the date that relief is granted.*

4 (B) *The Franchise Tax Board shall assess a daily penalty equal*
5 *to one hundred dollars (\$100) for each day of the period for which*
6 *relief from voidability is granted, but not to exceed a total penalty*
7 *equal to the amount of the tax for the period for which relief is*
8 *requested.*

9 (2) *If an application for relief from voidability is filed for a*
10 *period in which an application for revivor has been filed and the*
11 *certificate of revivor has been issued, all of the following shall*
12 *apply:*

13 (A) *The period for which relief is requested shall begin on the*
14 *date the taxpayer's powers, rights, and privileges had been*
15 *suspended or forfeited and ends on the date relief is granted.*

16 (B) *The Franchise Tax Board shall assess a daily penalty equal*
17 *to one hundred dollars (\$100) for each day of the period for which*
18 *relief from voidability is granted, but not to exceed a total penalty*
19 *equal to that amount of the tax that would be imposed under*
20 *Section 27151 for the period for which relief is requested.*

21 (C) *In the case of an exempt organization or trust subject to*
22 *the tax on unrelated business net receipts under Article 2*
23 *(commencing with Section 27731) of Chapter 4 (the tax on*
24 *unrelated business net receipts), the daily penalty provided in*
25 *subparagraph (B) shall not exceed a total penalty equal to the*
26 *amount of tax imposed upon its unrelated business taxable income*
27 *for the period for which relief is requested.*

28 (3) *Any penalty imposed under this subdivision shall, subject*
29 *to Section 27198.2, be due and payable on demand by the*
30 *Franchise Tax Board.*

31 (c) (1) *Upon satisfaction of the conditions specified in*
32 *subdivision (a), including through the application of Section*
33 *27198.2, the following shall apply:*

34 (A) *All contracts entered into during the period for which relief*
35 *is granted that have not been rescinded by a final court order*
36 *pursuant to Section 27196 may be enforced in the same manner*
37 *and to the same extent, with regard to both the parties to the*
38 *contract and any third parties, as if the contract had never been*
39 *voidable.*

1 (B) Any sale, transfer, or exchange of real property in this state
2 during the period for which relief is granted and which the
3 taxpayer at that time was not entitled to sell, transfer, or exchange
4 by reason of subdivision (d) of Section 27194 and which has not
5 been rescinded by a final court order pursuant to Section 27197,
6 shall be as valid as if the taxpayer had not been subject to
7 subdivision (d) of Section 27194 at the time of the sale, transfer,
8 or exchange.

9 (2) Upon being granted relief from voidability, the Franchise
10 Tax Board shall certify that relief to the taxpayer in a form and
11 manner as prescribed by the Franchise Tax Board. The certificate
12 shall be issued or mailed to the taxpayer, or as directed by the
13 taxpayer, and shall indicate the period for which relief is granted.

14 (d) The fact that a certificate of relief from voidability was issued
15 pursuant to this section and the information contained on that
16 certificate shall be subject to public disclosure. The certificate
17 shall be prima facie evidence of the relief from voidability for
18 contracts entered into during the period of relief stated on the
19 certificate and the certificate may be recorded in the office of the
20 county recorder of any county in this state.

21 27198.2. Notwithstanding Sections 27198 and 27198.5 that
22 require a taxpayer to pay any liability to the Franchise Tax Board
23 as a condition to revivor or relief from voidability, the Franchise
24 Tax Board shall issue a certificate of revivor under Section 27198,
25 or of relief from voidability under Section 27198.5, if the taxpayer
26 provides the Franchise Tax Board with an assumption of liability,
27 or a bond, deposit, or other security for taxpayer's liability, that
28 is acceptable to the Franchise Tax Board. The Franchise Tax
29 Board shall notify the person filing the application for revivor or
30 relief from voidability of the amount of the bond, deposit, or other
31 security, or of the terms of an assumption of liability, that must be
32 furnished as a condition of the revivor or the relief from voidability.
33 Obtaining revivor or voidability relief by securing the debt
34 pursuant to this section shall not constitute an admission of liability
35 by the taxpayer, nor relieve the taxpayer or any individual or
36 corporation from liability for any taxes, additions to tax, penalties,
37 or interest imposed by this part. A taxpayer that provides an
38 assumption of liability or a bond, deposit, or other security to
39 obtain revivor or relief from voidability may, notwithstanding
40 Section 27198 or 27198.5, file any returns required under those

1 *sections within a reasonable time after relief is granted by the*
2 *Franchise Tax Board.*

3 *27198.5. For the purposes of this article, “limited liability*
4 *taxpayer” means any business entity that is organized under the*
5 *laws of a state, the United States, or a foreign country where,*
6 *pursuant to those laws, one or more owners of the business entity*
7 *are not liable for the obligations of the business entity.*

8 *27198a. Before the certificate of revivor is issued by the*
9 *Franchise Tax Board, it shall obtain from the Secretary of State*
10 *an endorsement upon the application of the fact that the name of*
11 *the taxpayer that is an incorporated entity then meets the*
12 *requirements of subdivision (b) of Section 201 of the Corporations*
13 *Code in the case of a domestic incorporated taxpayer or of*
14 *subdivision (b) of Section 2106 of the Corporations Code in the*
15 *case of a foreign incorporated taxpayer that has qualified to do*
16 *business. The reference to amendment of the articles of*
17 *incorporation to set forth a new name contained in Sections 27191,*
18 *27192, and 27775 includes in the case of a foreign taxpayer the*
19 *filing of an amended statement and designation to set forth its new*
20 *name or to set forth an assumed name under subdivision (b) of*
21 *Section 2106 of the Corporations Code. Upon the issuance of the*
22 *certificate by the Franchise Tax Board the incorporated taxpayer*
23 *therein named shall become reinstated but the reinstatement shall*
24 *be without prejudice to any action, defense, or right that has*
25 *accrued by reason of the original suspension or forfeiture, except*
26 *that contracts that were voidable pursuant to Section 27196, but*
27 *that have not been rescinded pursuant to Section 27197, may have*
28 *that voidability cured in accordance with Section 27198.1. The*
29 *certificate of revivor shall be prima facie evidence of the*
30 *reinstatement and the certificate may be recorded in the office of*
31 *the county recorder of any county in this state.*

32 *27198b. Notwithstanding Section 27198, the Franchise Tax*
33 *Board may revive a limited liability taxpayer to good standing*
34 *without full payment of the taxes, penalties, and interest due if it*
35 *determines that the revivor will improve the prospects for collection*
36 *of the full amount due. This revivor may be limited as to time or*
37 *may limit the functions the revived limited liability taxpayer can*
38 *perform, or both. The powers, rights, and privileges may again be*
39 *suspended or forfeited if the Franchise Tax Board determines that*

1 *the prospects for collection of the full amount due have not been*
2 *improved by the revivor of the limited liability taxpayer.*

3 27198c. (a) *Upon issuance of the certificate of revivor, the*
4 *Franchise Tax Board shall transmit to the Secretary of State the*
5 *revived taxpayer's name and registration number.*

6 (b) *The taxpayer's name and registration number, the fact that*
7 *the taxpayer's powers, rights, and privileges have been revived*
8 *and the effective date of the revivor shall be a matter of public*
9 *record.*

10 (c) *If the Franchise Tax Board determines that a suspension or*
11 *forfeiture was in error by the Franchise Tax Board, the Franchise*
12 *Tax Board shall, in connection with the revivor, indicate that the*
13 *taxpayer is "restored." The status of the restored taxpayer shall*
14 *be retroactive to the date of suspension or forfeiture as if there*
15 *had been no suspension or forfeiture.*

16 (d) *If the Franchise Tax Board determines that the mailing of*
17 *the 60-day demand notice referred to in subdivision (d) of Section*
18 *27196 was in error or that the Franchise Tax Board's original*
19 *determination as to compliance with the 60-day demand notice*
20 *was in error, the Franchise Tax Board's revised conclusions shall*
21 *also be part of the public record referred to in that subdivision.*

22 27198d. *A certificate of suspension or forfeiture from the*
23 *Franchise Tax Board setting forth that the suspended or forfeited*
24 *taxpayer has been notified of its liability for tax or requirement to*
25 *file a return under this part and that the tax has not been paid or*
26 *the return has not been filed, shall constitute prima facie evidence*
27 *of the facts.*

28 27198e. (a) *The Franchise Tax Board may provide letters of*
29 *good standing, verifying a corporation's status for doing business*
30 *in California, at a charge reflecting the reasonable costs to the*
31 *department of responding to these requests.*

32 (b) *Fees received under this section shall be handled pursuant*
33 *to Section 19604.*

1 *CHAPTER 3. COMPUTATION OF NET RECEIPTS*

2
3 *Article 1. General*

4
5 27501. *For purposes of the tax imposed under Section 27151,*
6 *“net receipts” means business net receipts apportioned to this*
7 *state and nonbusiness net receipts allocated to this state.*

8
9 *Article 2. Net Receipts*

10
11 27511. *“Business net receipts” means business gross receipts*
12 *less business purchases from other businesses.*

13 27512. *“Nonbusiness net receipts” means nonbusiness gross*
14 *receipts less nonbusiness purchases from other businesses, and*
15 *includes all net receipts other than business net receipts.*

16
17 *Article 3. Receipts*

18
19 27521. *“Business gross receipts” means gross receipts that*
20 *satisfy either of the following:*

21 (a) *Gross receipts arising from transactions and activity in the*
22 *regular course of the taxpayer’s trade or business.*

23 (b) *Gross receipts from the sale or exchange of tangible and*
24 *intangible property if the acquisition, management, and disposition*
25 *of the property constitute integral parts of the taxpayer’s regular*
26 *trade or business operations.*

27 27522. *“Nonbusiness gross receipts” means gross receipts*
28 *other than business gross receipts.*

29 27523. (a) (1) *“Gross receipts” means gross amounts realized*
30 *(the sum of money and the fair market value of other property or*
31 *services received) on the sale, rental, licensing, or exchange of*
32 *property, or from the performance of services.*

33 (2) *For financial institutions subject to tax under Article 3*
34 *(commencing with Section 27161) of Chapter 2, gross receipts*
35 *includes interest received.*

36 (b) *Notwithstanding paragraph (1) of subdivision (a), “gross*
37 *receipts” shall not include, among other items, any of the*
38 *following:*

39 (1) *Interest, dividends, principal, and any amount realized from*
40 *loans, bonds, mutual funds, certificates of deposit, repurchase*

1 *agreements, derivative financial instruments (including but not*
2 *limited to futures contracts, forward contracts, and options), or*
3 *any other financial instruments, whether the financial instruments*
4 *are traded in connection with a treasury function, a hedging*
5 *function, or any other purpose.*

6 *(2) Proceeds from the issuance of the taxpayer's own stock or*
7 *from the sale of treasury stock.*

8 *(3) Proceeds that constitute contributions to capital to the*
9 *business entity.*

10 *(4) Proceeds from selling a division, subsidiary, or interest in*
11 *another business, except to the extent of the gain realized on the*
12 *sale of that interest.*

13 *(5) Damages and other amounts received as the result of*
14 *litigation, unless the recipient is a law firm.*

15 *(6) Property acquired by an agent on behalf of another.*

16 *(7) Tax refunds.*

17 *(8) Pension reversions.*

18 *(9) Income from discharge of indebtedness, except as otherwise*
19 *provided.*

20 *(10) Price of commodities or other goods that are traded for*
21 *similar commodities or other goods, whether the trading is done*
22 *for hedging or other purposes.*

23 *(11) Proceeds from selling accounts receivables.*

24 *(12) Proceeds from selling land, except to the extent of the gain*
25 *realized on the sale of that land.*

26 *(13) Proceeds from intercompany transactions that are*
27 *eliminated under regulations issued by the Franchise Tax Board.*

28 *(14) Receipts allocated or apportioned to a business entity in*
29 *its capacity as a member of, or holder of, an economic interest in*
30 *a pass-through entity if those receipts are directly or indirectly*
31 *attributable to receipts that are subject to the tax imposed under*
32 *this part. For purposes of this paragraph, pass-through entity*
33 *means a partnership or an "S" corporation.*

34 *27524. The following amounts, as calculated under the rules*
35 *set forth below, are specifically included as items of gross receipts*
36 *within the meaning of subdivision (a) of Section 27523:*

37 *(a) The provisions of Section 72(u) of the Internal Revenue*
38 *Code, relating to the treatment of annuity contracts not held by*
39 *natural persons, shall be applicable.*

(b) Amounts received other than amounts paid by reason of the death of the insured under life insurance, endowment or annuity contracts, either during the term or at maturity or upon surrender of the contract, equal to the total amount of premiums paid. In the case of a transfer for a valuable consideration by assignment or otherwise, of a life insurance, endowment, or annuity contract or any interest therein, only the actual value of the consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be excluded from gross income under Section 24305 or this section. The preceding sentence shall not apply in the case of that transfer if the contract or interest has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to that basis of that contract or interest in the hands of the transferor or to a corporation in which the insured is a shareholder or officer.

(c) (1) Except as provided in paragraph (2), amounts received under life insurance policies and contracts paid by reason of the death of the insured but if the amounts are held by the insurer under an agreement to pay interest, the interest payments shall be included in gross income.

(2) Proceeds of flexible premium contracts payable by reason of death shall be excluded from gross income only in accordance with Section 101(f) of the Internal Revenue Code.

(d) (1) Section 108 of the Internal Revenue Code, relating to income from discharge of indebtedness, shall apply, except as otherwise provided.

(2) Section 108(b)(2)(B) of the Internal Revenue Code, relating to general business credit, is modified by substituting “this part” in lieu of “Section 38 (relating to general business credit).”

(3) Section 108(b)(2)(G) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply.

(4) Section 108(b)(3)(B) of the Internal Revenue Code, relating to credit carryover reduction, is modified by substituting “11.1 cents” in lieu of “33 1/3 cents” in each place in which it appears. In the case where more than one credit is allowable under this part, the credits shall be reduced on a pro rata basis.

(5) Section 108(g)(3)(B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting “\$9” in lieu of “\$3.”

1 (e) (1) Section 110 of the Internal Revenue Code, relating to
2 qualified lessee construction allowances for short-term leases,
3 shall apply, except as otherwise provided.

4 (2) Section 110(b) of the Internal Revenue Code is modified by
5 substituting the phrase “(including for purposes of paragraph (2)
6 of subdivision (e) of former Section 24349)” for the phrase
7 “(including for purposes of Section 168(i)(8)(B)).”

8 (3) Section 110(c)(2) of the Internal Revenue Code is modified
9 by substituting the phrase “(as determined under the rules of
10 paragraph (3) of subdivision (e) of former Section 24349)” for the
11 phrase “(as determined under the rules of Section 168(i)(3)).”

12 (f) (1) Section 111 of the Internal Revenue Code, relating to
13 recovery of tax benefit items, shall apply, except as otherwise
14 provided.

15 (2) Sections 111(b) and 111(c) of the Internal Revenue Code,
16 relating to credits and treatment of credit carryovers, shall be
17 applicable with respect to credits allowable under this part.

18 Article 4. Purchases

19
20
21 27531. (a) “Business purchases from other businesses” means
22 purchases from other businesses that satisfy either of the following:

23 (1) Arising from transactions and activity in the regular course
24 of the taxpayer’s trade or business.

25 (2) Purchases or acquisitions of tangible and intangible property
26 if the acquisition, management, and disposition of the property
27 constitute integral parts of the taxpayer’s regular trade or business
28 operations.

29 (b) (1) “Purchases from other businesses” means purchases
30 from other entities that are utilized in the production of the gross
31 receipts subject to the tax imposed by this part, and includes
32 purchases from entities not subject to the tax imposed by this part,
33 including nonprofit entities, insurance companies and
34 governmental entities, and specifically means all of the following:

35 (A) Inventory acquired during the taxable year, including
36 freight, shipping, delivery, or engineering charges included in the
37 original contract price for that inventory.

38 (B) Assets, including the costs of fabrication and installation,
39 acquired during the taxable year of a type that are, or under the
40 Internal Revenue Code will become, eligible for depreciation,

1 *amortization, or accelerated capital cost recovery for federal*
2 *income tax purposes.*

3 *(C) To the extent not included in inventory or depreciable*
4 *property, materials, and supplies, including repair parts and fuel.*

5 *(D) Payments for the rental or leasing of property.*

6 *(E) For a staffing company, compensation of personnel supplied*
7 *to customers of staffing companies.*

8 *(F) As used in this paragraph:*

9 *(i) “Compensation” means that term as defined under Section*
10 *28120, plus all payroll tax and worker’s compensation costs*
11 *directly related thereto.*

12 *(ii) “Staffing company” means a taxpayer whose business*
13 *activities are included in industry group 736 under the Standard*
14 *Industrial Classification Code, as compiled by the United States*
15 *Department of Labor.*

16 *(2) For purposes of this subdivision, “inventory” means all of*
17 *the following:*

18 *(A) The stock of goods held for resale in the regular course of*
19 *trade of a retail or wholesale business, including electricity or*
20 *natural gas purchased for resale.*

21 *(B) Finished goods, goods in process, and raw materials of a*
22 *manufacturing business purchased from another person.*

23 *(C) For a person that is a securities trader, broker, or dealer*
24 *or a person included in the unitary business group of that securities*
25 *trader, broker, or dealer that buys and sells for its own account,*
26 *contracts that are subject to the Commodity Exchange Act, (7*
27 *U.S.C. Secs. 1-27f, incl.), the cost of securities as defined under*
28 *Section 475(c)(2) of the Internal Revenue Code, and for a securities*
29 *trader the cost of commodities as defined under Section 475(e)(2)*
30 *of the Internal Revenue Code, and for a broker or dealer the cost*
31 *of commodities as defined under Section 475(e)(2)(b), (c), and (d)*
32 *of the Internal Revenue Code, excluding interest expense other*
33 *than interest expense related to repurchase agreements. As used*
34 *in this subparagraph:*

35 *(i) “Broker” means that term as defined under Section 78c(a)(4)*
36 *of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78c).*

37 *(ii) “Dealer” means that term as defined under Section*
38 *78c(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. Sec.*
39 *78c).*

1 (iii) “Securities trader” means a person that engages in the
2 trade or business of purchasing and selling investments and trading
3 assets.

4 (3) For financial institutions subject to tax under Article 3
5 (commencing with Section 27161) of Chapter 2, purchases includes
6 interest paid.

7 27532. There shall be allowed as a deduction for a taxable
8 year an amount equal to the net excess purchase carryover to that
9 taxable year. For purposes of this section, the term “net excess
10 purchase” means the excess of the purchases allowed to reduce
11 gross receipts under this chapter over the gross receipts for a
12 taxable year. A net excess purchase for any taxable year shall be
13 a net excess purchase carryover to each of the five taxable years
14 following the taxable year of excess purchases. The Franchise Tax
15 Board shall issue regulations to implement this section, which
16 shall be comparable to the provisions of Section 172 of the Internal
17 Revenue Code and the applicable regulations.

18 27533. The following amounts, as calculated under the rules
19 set forth below, are specifically excluded as business purchases
20 from other businesses within the meaning of subdivision (a) of
21 Section 27531:

22 (a) (1) Amounts paid by a taxpayer with respect to acquisition
23 from a club which restricts membership or the use of its services
24 or facilities on the basis of ancestry or any characteristic listed
25 or defined in Section 11135 of the Government Code.

26 (2) A club described in paragraph (1) of subdivision (a) holding
27 an alcoholic beverage license pursuant to Division 9 (commencing
28 with Section 23000) of the Business and Professions Code, except
29 a club holding an alcoholic beverage license pursuant to Section
30 23425 thereof, shall provide on each receipt furnished to a
31 taxpayer a printed statement as follows: “The expenditures covered
32 by this receipt are nondeductible for state income tax purposes or
33 net receipts tax purposes.”

34 (3) For purposes of this subdivision:

35 (A) “Amounts paid” means those amounts otherwise treated as
36 purchases under this article, and includes, but is not limited to,
37 club membership dues and assessments, food and beverage
38 expenses, expenses for services furnished by the club, and
39 reimbursements or salary adjustments to officers or employees for
40 any of the preceding expenses.

1 (B) “Club” means a club as defined in Division 9 (commencing
2 with Section 23000) of the Business and Professions Code, except
3 a club as defined in Section 23425.

4 (b) The amount of any bad debt deduction under the Internal
5 Revenue Code for the taxable year that is in excess of the amount
6 of any debts that become worthless within the taxable year.

7 (c) (1) Any amounts directly attributable to illegal activities,
8 as defined in Chapters 9 (commencing with Section 319), 10
9 (commencing with Section 330), or 10.5 (commencing with Section
10 337.1) of Title 9 of Part 1 of the Penal Code.

11 (2) For purposes of this subdivision, a prior, final determination
12 by a court of competent jurisdiction of this state in any criminal
13 proceedings or any proceeding in which the state, county, city and
14 county, city or other political subdivision was a party on the merits
15 of the legality of the activities of a taxpayer or predecessor in
16 interest of a taxpayer shall be binding in determining whether this
17 subdivision applies.

18 (d) (1) Any amounts, including deductions for cost of goods
19 sold, directly attributable to illegal activities as defined in Sections
20 266h or 266i of, or in Chapter 4 (commencing with Section 211)
21 of Title 8 of, Chapter 7.5 (commencing with Section 311) of Title
22 9 of, Chapter 8 (commencing with Section 314) of Title 9 of, or
23 Chapter 2 (commencing with Section 459), Chapter 5 (commencing
24 with Section 484), or Chapter 6 (commencing with Section 503)
25 of Title 13 of, Part 1 of the Penal Code, or as defined in Chapter
26 6 (commencing with Section 11350) of Division 10 of the Health
27 and Safety Code.

28 (2) For purposes of this subdivision, a prior, final determination
29 by a court of competent jurisdiction of this state in any criminal
30 proceedings or any proceeding in which the state, county, city and
31 county, city, or other political subdivision was a party on the merits
32 of the legality of the activities of a taxpayer or predecessor in
33 interest of a taxpayer shall be binding in determining whether this
34 subdivision applies.

35 (e) (1) Any amounts paid or incurred in the taxable year with
36 respect to substandard housing located in this state, except as
37 provided in paragraph (5).

38 (2) “Substandard housing” means occupied dwellings from
39 which the taxpayer derives rental income or unoccupied or
40 abandoned dwellings for which both of the following apply:

1 (A) *Either of the following occurs:*

2 (i) *For occupied dwellings from which the taxpayer derives*
3 *rental income, a state or local government regulatory agency has*
4 *determined that the housing violates state law or local codes*
5 *dealing with health, safety, or building.*

6 (ii) *For dwellings that are unoccupied or abandoned for at least*
7 *90 days, a state or local government regulatory agency has cited*
8 *the housing for conditions that constitute a serious violation of*
9 *state law or local codes dealing with health, safety, or building,*
10 *and that constitute a threat to public health and safety.*

11 (B) *Either of the following occurs:*

12 (i) *After written notice of violation by the regulatory agency,*
13 *specifying the applicability of this section, the housing has not*
14 *been repaired or brought to a condition of compliance within six*
15 *months after the date of the notice or the time prescribed in the*
16 *notice, whichever period is later.*

17 (ii) *Good faith efforts for compliance have not been commenced,*
18 *as determined by the regulatory agency. “Substandard housing”*
19 *also means employee housing that has not, within 30 days of the*
20 *date of the written notice of violation or the date for compliance*
21 *prescribed in the written notice of violation, been brought into*
22 *compliance with the conditions stated in the written notice of*
23 *violation of the Employee Housing Act (Part 1 (commencing with*
24 *Section 17000) of Division 13 of the Health and Safety Code)*
25 *issued by the enforcement agency that specifies the application of*
26 *this section. The regulatory agency may, for good cause shown,*
27 *extend the compliance date prescribed in a violation notice.*

28 (3) (A) *When the period specified in subparagraph (B) of*
29 *paragraph (2) of this subdivision has expired without compliance,*
30 *the government regulatory agency shall mail to the taxpayer a*
31 *notice of noncompliance. The notice of noncompliance shall be in*
32 *a form and shall include information prescribed by the Franchise*
33 *Tax Board, shall be mailed by certified mail to the taxpayer at his*
34 *or her last known address, and shall advise the taxpayer of (i) an*
35 *intent to notify the Franchise Tax Board of the noncompliance*
36 *within 10 days unless an appeal is filed, (ii) where an appeal may*
37 *be filed, and (iii) a general description of the tax consequences of*
38 *that filing with the Franchise Tax Board. Appeals shall be made*
39 *to the same body and in the same manner as appeals from other*
40 *actions of the regulatory agency. If no appeal is made within 10*

1 days or if after disposition of the appeal the regulatory agency is
2 sustained, the regulatory agency shall notify, in writing, the
3 Franchise Tax Board of the noncompliance.

4 (B) The notice of noncompliance shall contain the legal
5 description or the lot and block numbers of the real property, the
6 assessor's parcel number, and the name of the owner of record as
7 shown on the latest equalized assessment roll. In addition, the
8 regulatory agency shall, at the same time as notification of the
9 notice of noncompliance is sent to the Franchise Tax Board, record
10 a copy of the notice of noncompliance in the office of the recorder
11 for the county in which the substandard housing is located that
12 includes a statement of tax consequences that may be determined
13 by the Franchise Tax Board. However, the failure to record a
14 notice with the county recorder does not relieve the liability of any
15 taxpayer nor does it create any liability on the part of the
16 regulatory agency.

17 (C) The regulatory agency may charge the taxpayer a fee in an
18 amount not to exceed the regulatory agency's costs incurred in
19 recording any notice of noncompliance or issuing any release of
20 that notice. The notice of compliance shall be recorded and shall
21 serve to expunge the notice of noncompliance. The notice of
22 compliance shall contain the same recording information required
23 for the notice of noncompliance. No deduction by the taxpayer, or
24 any other taxpayer who obtains title to the property subsequent to
25 the recordation of the notice of noncompliance, shall be allowed
26 for the items provided in paragraph (1) of this subdivision from
27 the date of the notice of noncompliance until the date the regulatory
28 agency determines that the substandard housing has been brought
29 to a condition of compliance. The regulatory agency shall mail to
30 the Franchise Tax Board and the taxpayer a notice of compliance,
31 which notice shall be in the form and include the information
32 prescribed by the Franchise Tax Board. In the event the period of
33 noncompliance does not cover an entire taxable year, the
34 deductions shall be denied at the rate of one-twelfth for each full
35 month during the period of noncompliance.

36 (D) If the property is owned by more than one owner or the
37 recorded title is in the name of a fictitious owner, the notice
38 requirements provided in subdivision (b) and this subdivision shall
39 be satisfied for each owner if the notices are mailed to one owner
40 or to the fictitious name owner at the address appearing on the

1 latest available property tax bill. However, notices made pursuant
2 to this subdivision shall not relieve the regulatory agency from
3 furnishing taxpayer identification information required to
4 implement this section to the Franchise Tax Board.

5 (4) For purposes of this section, a notice of noncompliance shall
6 not be mailed by the regulatory agency to the Franchise Tax Board
7 if any of the following occurs:

8 (A) The housing was rendered substandard solely by reason of
9 earthquake, flood, or other natural disaster unless the condition
10 remains for more than three years after the disaster.

11 (B) The owner of the substandard housing has secured financing
12 to bring the housing into compliance with those laws or codes that
13 have been violated, causing the housing to be classified as
14 substandard, and has commenced repairs or other work necessary
15 to bring the housing into compliance.

16 (C) The owner of substandard housing that is not within the
17 meaning of housing accommodation, as defined in subdivision (d)
18 of Section 35805 of the Health and Safety Code, has done both of
19 the following:

20 (i) Attempted to secure financing to bring the housing into
21 compliance with those laws or codes that have been violated,
22 causing the housing to be classified as substandard.

23 (ii) Been denied that financing solely because the housing is
24 located in a neighborhood or geographical area in which financial
25 institutions do not provide financing for rehabilitation of any of
26 that type of housing.

27 (5) This section shall not apply to deductions from gross receipts
28 derived from property rendered substandard solely by reason of
29 a change in applicable state or local housing standards unless
30 those violations cause substantial danger to the occupants of the
31 property, as determined by the regulatory agency that has served
32 notice of violation pursuant to paragraph (2).

33 (6) The owner of substandard housing found to be in
34 noncompliance shall, upon total or partial divestiture of interest
35 in the property, immediately notify the regulatory agency of the
36 name and address of the person or persons to whom the property
37 has been sold or otherwise transferred and the date of the sale or
38 transference.

39 (7) By July 1 of each year, the regulatory agency shall report,
40 to the appropriate legislative body of its jurisdiction, all of the

1 following information, for the preceding calendar year, regarding
2 its activities to secure code enforcement, which shall be public
3 information:

4 (A) The number of written notices of violation issued for
5 substandard housing under paragraph (2).

6 (B) The number of violations complied with within the period
7 prescribed in paragraph (2).

8 (C) The number of notices of noncompliance issued pursuant
9 to paragraph (3).

10 (D) The number of appeals from those notices pursuant to
11 paragraph (3).

12 (E) The number of successful appeals by owners.

13 (F) The number of notices of noncompliance mailed to the
14 Franchise Tax Board pursuant to paragraph (3).

15 (G) The number of cases in which a notice of noncompliance
16 was not sent pursuant to the provisions of paragraph (4).

17 (H) The number of extensions for compliance granted pursuant
18 to paragraph (2) and the mean average length of the extensions.

19 (I) The mean average length of time from the issuance of a
20 notice of violation to the mailing of a notice of noncompliance to
21 the Franchise Tax Board where the notice is actually sent to the
22 Franchise Tax Board.

23 (J) The number of cases where compliance is achieved after a
24 notice of noncompliance has been mailed to the Franchise Tax
25 Board.

26 (K) The number of instances of disallowance of tax deductions
27 by the Franchise Tax Board resulting from referrals made by the
28 regulatory agency. This information may be filed in a supplemental
29 report in succeeding years as it becomes available.

30 (8) The provisions of this section relating to substandard
31 housing consisting of abandoned or unoccupied dwellings do not
32 apply to any lender engaging in a “federally related transaction,”
33 as defined in Section 11302 of the Business and Professions Code,
34 who acquires title through judicial or nonjudicial foreclosure, or
35 accepts a deed in lieu of foreclosure. The exception provided in
36 this subdivision covers only substandard housing consisting of
37 abandoned or unoccupied dwellings involved in the federally
38 related transaction.

Article 5. *Treatment of Preenactment Credits, Excess Capital Losses, and Net Operating Losses*

27541. (a) *Notwithstanding any provision to the contrary in Part 11 (commencing with Section 23001), for taxable years beginning on or after January 1, 2013, the amount of any remaining net operating loss, excess capital loss, or credit carryforward calculated under Part 11 (commencing with Section 23001) shall be allowed to be taken against net receipts in the case of net operating loss and excess capital loss carryovers or against the tax liability in the case of credit carryovers under the net business receipts tax under Part 12 (commencing with Section 27001), subject to the annual limitation specified in paragraph (3) of subdivision (b).*

(b) *For purposes of this section, the following rules shall apply:*

(1) *The amount of any net operating loss, excess capital loss, or credit carryover remaining on the first day of the first taxable year beginning on or after January 1, 2013, shall, regardless of the number of years remaining in the carryover period under Part 11 (commencing with Section 23001), be allowed to be carried forward under this part for a period of up to 20 years, until exhausted.*

(2) *The limitation in paragraph (3) upon the amount of any net operating loss, excess capital loss, or credit carryover that may be used in any taxable year under this part shall be computed after first applying against the net business receipts tax liability any credits allowed under Sections 17039.3 and 27811, including any carryovers of those credits allowed under this part.*

(3) *The annual limitation under this section shall be computed as follows:*

(A) *For net operating loss carryovers, no more than 5 percent of the net business receipts under Part 12 (commencing with Section 27001) before the application of any net operating loss carryovers.*

(B) *For excess capital losses, no more than 5 percent of the net business receipts under Part 12 (commencing with Section 27001) before the application of any excess capital losses.*

(C) *For credit carryovers, no more than 5 percent of the net business receipts tax liability under Part 12 (commencing with*

1 *Section 27001) after the application of any credits under this part*
2 *and before the application of any credit carryovers.*

3 *(D) The annual limitation under this paragraph shall not exceed*
4 *5 percent of the aggregate of the amounts specified in*
5 *subparagraphs (A), (B), and (C).*

6 *(c) The Franchise Tax Board may prescribe by forms and*
7 *instructions any rules necessary to implement this section.*

8
9 *Article 6. Assignment of Credits*

10
11 *27542. (a) (1) Notwithstanding any other law, for each taxable*
12 *year beginning on or after January 1, 2013, any credit allowed to*
13 *a taxpayer under Chapter 3.5 of Part 11 (commencing with Section*
14 *23604) that is an “eligible credit,” within the meaning of*
15 *paragraph (2) of subdivision (b), may be assigned by that taxpayer*
16 *to any “eligible assignee” within the meaning of paragraph (3)*
17 *of subdivision (b).*

18 *(2) Except as specifically provided in this section, following an*
19 *assignment of any eligible credit under this section, the eligible*
20 *assignee shall be treated as if it originally earned the assigned*
21 *credit.*

22 *(b) For purposes of this section, the following definitions shall*
23 *apply:*

24 *(1) “Affiliated corporation” means a corporation that is a*
25 *member of a commonly controlled group as defined in Section*
26 *25105.*

27 *(2) “Eligible credit” means either of the following:*

28 *(A) Any credit earned by the taxpayer in a taxable year*
29 *beginning before January 1, 2013, that is eligible to be carried*
30 *forward to the taxpayer’s first taxable year beginning on or after*
31 *January 1, 2013, under Part 11 (commencing with Section 23001).*

32 *(B) Any credit earned under Section 27811 in any taxable year*
33 *beginning on or after January 1, 2013.*

34 *(3) “Eligible assignee” means any affiliated corporation that*
35 *is properly treated as a member of the same combined reporting*
36 *group pursuant to Section 28101 or 28110 as the taxpayer*
37 *assigning the eligible credit as of:*

38 *(A) In the case of credits earned in taxable years beginning*
39 *before January 1, 2013:*

40 *(i) December 31, 2012.*

1 (ii) *The last day of the taxable year of the assigning taxpayer*
2 *in which the eligible credit is assigned.*

3 (B) *In the case of credits earned in taxable years beginning on*
4 *or after January 1, 2013:*

5 (i) *The last day of the first taxable year in which the credit was*
6 *allowed to the taxpayer.*

7 (ii) *The last day of the taxable year of the assigning taxpayer*
8 *in which the eligible credit is assigned.*

9 (c) (1) *The election to assign any credit under subdivision (a)*
10 *shall be irrevocable once made, and shall be made by the taxpayer*
11 *allowed that credit on its original return for the taxable year in*
12 *which the assignment is made.*

13 (2) *The taxpayer assigning any credit under this section shall*
14 *reduce the amount of its unused credit by the face amount of any*
15 *credit assigned under this section, and the amount of the assigned*
16 *credit shall not be available for application against the assigning*
17 *taxpayer's "business net receipts tax" in any taxable year, nor*
18 *shall it thereafter be included in the amount of any credit carryover*
19 *of the assigning taxpayer.*

20 (3) *The eligible assignee of any credit under this section may*
21 *apply all or any portion of the assigned credits against the*
22 *"business net receipts tax," as defined in Section 27036, of the*
23 *eligible assignee for the taxable year in which the assignment*
24 *occurs, or any subsequent taxable year, subject to any carryover*
25 *period limitations that apply to the assigned credit and the rules*
26 *of Section 27541 limiting the amount of carryover credits which*
27 *may be applied in any taxable year.*

28 (4) *The eligible assignee shall not sell, otherwise transfer, or*
29 *thereafter assign the assigned credit to any other taxpayer.*

30 (d) (1) *Consideration shall not be required to be paid by the*
31 *eligible assignee to the assigning taxpayer for assignment of any*
32 *credit under this section.*

33 (2) *If any consideration is paid by the eligible assignee to the*
34 *assigning taxpayer for the transfer of an eligible credit under this*
35 *section, then:*

36 (A) *Any amounts paid to the eligible assignee under this part*
37 *with respect to the assignment shall not be treated as a purchase.*

38 (B) *Any amounts received by the assigning taxpayer shall not*
39 *be treated as a gross receipt under this part.*

(e) (1) The Franchise Tax Board shall specify the form and manner in which the election required under this section shall be made, as well as any necessary information that shall be required to be provided by the taxpayer assigning the credit to the eligible assignee.

(2) Any taxpayer who assigns any credit under this section shall report any information, in the form and manner specified by the Franchise Tax Board, necessary to substantiate any credit assigned under this section and verify the assignment and subsequent application of any assigned credit.

(3) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraphs (1) and (2).

(4) The Franchise Tax Board may issue any regulations necessary to implement this section, including any regulations necessary to specify the treatment of any assignment that does not comply with the requirements of this section (including, for example, where the taxpayer and eligible assignee are not properly treated as members of the same combined reporting group on any of the dates specified in paragraph (3) of subdivision (b)).

(f) (1) The taxpayer and the eligible assignee shall be jointly and severally liable for any tax, addition to tax, or penalty that results from the disallowance, in whole or in part, of any eligible credit assigned under this section.

(2) This section shall not limit the authority of the Franchise Tax Board to audit either the assigning taxpayer or the eligible assignee with respect to any eligible credit assigned under this section.

CHAPTER 4. EXEMPT BUSINESS ENTITIES

Article 1. Exemptions from this Part

27701. Organizations that are organized and operated for nonprofit purposes within the provisions of a specific section of this article are exempt from taxes imposed under this part, except as provided in this article or in Article 2 (commencing with Section 27731) of this chapter, if all of the following apply:

1 (a) An application for exemption is submitted in the form
2 prescribed by the Franchise Tax Board.

3 (b) A filing fee of twenty-five dollars (\$25) is paid with each
4 application for exemption filed with the Franchise Tax Board.

5 (c) The Franchise Tax Board issues a determination exempting
6 the organization from tax.

7 This section shall not prevent a determination from having
8 retroactive effect and shall not prevent the issuance of a
9 determination with respect to a domestic organization that was in
10 existence prior to January 1, 1970, and exempt under prior law
11 without the submission of a formal application or payment of a
12 filing fee. For purposes of this section, the term “domestic” means
13 created or organized under the laws of this state. The Franchise
14 Tax Board may issue rulings and regulations as are necessary and
15 reasonable to carry out this article.

16 27701a. Labor, agricultural, or horticultural organizations
17 other than cooperative organizations described in Section 27904
18 or 27905 (unless the cooperative organization is determined by
19 the Internal Revenue Service to be an organization described in
20 Section 501(c)(5) of the Internal Revenue Code, as amended). For
21 purposes of this section, the term “agricultural” includes the art
22 or science of cultivating land, harvesting crops or aquatic
23 resources, or raising livestock.

24 27701b. A fraternal order described in Section 501(c)(8) of
25 the Internal Revenue Code.

26 27701c. A cemetery company described in Section 501(c)(13)
27 of the Internal Revenue Code.

28 27701d. (a) A corporation, community chest or trust, organized
29 and operated exclusively for religious, charitable, scientific, testing
30 for public safety, literary, or educational purposes, or to foster
31 national or international amateur sports competition (but only if
32 no part of its activities involved the provision of athletic facilities
33 or equipment), or for the prevention of cruelty to children or
34 animals, no part of the net earnings of which inures to the benefit
35 of any private shareholder or individual, no substantial part of
36 the activities of which is carrying on propaganda or otherwise
37 attempting to influence legislation (except as otherwise provided
38 in Section 27704.5), and which does not participate in, or intervene
39 in (including the publishing or distribution of statements), any
40 political campaign on behalf of (or in opposition to) any candidate

for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes, the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section or Section 501(c)(3) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board, that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. The irrevocable dedication requirement shall not be a sole basis for revocation of an exempt determination made by the Franchise Tax Board prior to the effective date of this amendment.

(b) (1) In the case of a qualified amateur sports organization.

(A) The requirement of subdivision (a) that no part of its activities involves the provision of athletic facilities or equipment shall not apply.

(B) That organization shall not fail to meet the requirements of subdivision (a) merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, “qualified amateur sports organization” means any organization organized and operated exclusively to foster national or international amateur sports competition if that organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section 27701, an organization organized and operated for nonprofit purposes in accordance with this section shall be exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 27731), upon its submission to the Franchise Tax Board of a copy of the notification issued by the Internal Revenue Service approving the organization’s

1 *tax-exempt status pursuant to Section 501(c)(3) of the Internal*
2 *Revenue Code. The effective date of an organization's tax-exempt*
3 *status for state income tax purposes pursuant to this subdivision*
4 *shall be no later than the effective date of the organization's*
5 *tax-exempt status, under Section 501(c)(3) of the Internal Revenue*
6 *Code, for federal income tax purposes.*

7 *(2) If, for federal income tax purposes, an organization's*
8 *tax-exempt status under Section 501(c)(3) of the Internal Revenue*
9 *Code is suspended or revoked, the organization shall notify the*
10 *Franchise Tax Board of the suspension or revocation, in the form*
11 *and manner prescribed by the Franchise Tax Board. Upon*
12 *notification, the board shall suspend or revoke, whichever is*
13 *applicable, for state income tax purposes, an organization's*
14 *tax-exempt status granted pursuant to paragraph (1) of this*
15 *subdivision.*

16 *(3) This subdivision shall not be construed to prevent the*
17 *Franchise Tax Board from revoking the exemption of an*
18 *organization that is not organized or operated in accordance with*
19 *this chapter or Section 501(c)(3) of the Internal Revenue Code.*

20 *(d) The Franchise Tax Board may prescribe rules and*
21 *regulations to implement this section.*

22 *27701e. A business league, chamber of commerce, real estate*
23 *board, or a board of trade described in Section 501(c)(6) of the*
24 *Internal Revenue Code, except that the phrase "or professional*
25 *football leagues (whether or not administering a pension fund for*
26 *football players)" shall not apply.*

27 *27701f. (a) A civic league, social welfare organization, or*
28 *local organization of employees described in Section 501(c)(4) of*
29 *the Internal Revenue Code, except as otherwise provided.*

30 *(b) An organization is not organized exclusively for exempt*
31 *purposes under Section 501(c)(4) of the Internal Revenue Code*
32 *unless its assets are irrevocably dedicated to one or more purposes*
33 *listed in Section 501(c)(4) of the Internal Revenue Code.*

34 *27701g. A social organization described in Section 501(c)(7)*
35 *of the Internal Revenue Code.*

36 *27701h. (a) A corporation described in Section 501(c)(2) of*
37 *the Internal Revenue Code, relating to certain title-holding*
38 *companies.*

1 (b) For purposes of applying Section 501(c)(2) of the Internal
2 Revenue Code under this section, the term “corporation” includes
3 a limited liability company that is classified as a partnership.

4 27701i. A voluntary employees’ beneficiary association
5 described in Section 501(c)(9) of the Internal Revenue Code.

6 27701j. A teachers’ retirement fund association described in
7 Section 501(c)(11) of the Internal Revenue Code.

8 27701k. Religious or apostolic corporations, if those
9 corporations have a common treasury or community treasury even
10 if those corporations engaged in business for the common benefit
11 of the members, but only if the members thereof include (at the
12 time of filing their returns) in their gross income their entire pro
13 rata shares, whether distributed or not, of the net income of the
14 corporation for the year. Any amount so included in the gross
15 income of a member shall be treated as a dividend received.

16 27701l. (a) A domestic fraternal society described in Section
17 501(c)(10) of the Internal Revenue Code, except as otherwise
18 provided.

19 (b) For purposes of this section, the term “domestic” means
20 created or organized in the United States or under the law of the
21 United States or of any state or territory therein.

22 27701n. (a) A supplemental unemployment compensation trust
23 described in Section 501(c)(17) of the Internal Revenue Code,
24 except as otherwise provided.

25 (b) The following references in Section 501(c)(17)(E) of the
26 Internal Revenue Code shall be modified as follows:

27 (1) The phrase “under Section 27701” shall be substituted for
28 the phrase “under subsection (a).”

29 (2) The phrase “Section 27701i” shall be substituted for the
30 phrase “paragraph (9) of this subsection.”

31 27701p. A trust or plan which meets the requirements of Public
32 Law 87-792, 76 U.S. Stats. 809, approved October 10, 1962 (the
33 Self-Employed Individuals Tax Retirement Bill of 1962), but only
34 if such trust or plan is not exempt from taxation under Section
35 17631.

36 27701r. (a) A political organization. However, a political
37 organization shall be subject to tax under this part with respect
38 to its “political organization net receipts” and such net receipts
39 shall be subject to tax as provided by Chapter 2 (commencing with
40 Section 27101).

1 (b) For purposes of this section, the political organization net
2 receipts of any organization for any taxable year is an amount
3 equal to the excess over one hundred dollars (\$100), if any, of the
4 gross receipts for the taxable year (excluding any exempt function
5 receipts), divided by the deductions allowed by this part which are
6 directly connected with the production of the gross receipts
7 (excluding exempt function receipts).

8 (c) For purposes of this section, the term “exempt function net
9 receipts” means any amount received as the following:

10 (1) A contribution of money or other property.

11 (2) Membership dues, a membership fee or assessment from a
12 member of the political organization.

13 (3) Proceeds from a political fundraising or entertainment event,
14 or proceeds from the sale of political campaign materials, that
15 are not received in the ordinary course of any trade or business,
16 to the extent the amount is segregated for use only for the exempt
17 function of the political organization.

18 (d) For purposes of this part, if any political organization:

19 (1) Contributes any amount to or for the use of any political
20 organization that is treated as exempt from tax under subdivision
21 (a) of this section.

22 (2) Contributes any amount to or for the use of any organization
23 described in paragraph (1) or (2) of Section 509(a) of the Internal
24 Revenue Code, that is exempt from tax under Section 27701.

25 (3) Deposits any amount in the General Fund or the Treasury
26 of the United States or in the General Fund of any state or local
27 government, such amount shall be treated as an amount not
28 diverted for the personal use of the candidate or any other person.
29 No deduction shall be allowed under this part for the contribution
30 or deposit of any amount described in the preceding sentence.

31 (e) For purposes of this section:

32 (1) The term “political organization” means a party, committee,
33 association, fund (including the trust of an individual candidate),
34 or other organization (whether or not incorporated) organized
35 and operated primarily for the purpose of directly or indirectly
36 accepting contributions or making expenditures, or both, for an
37 exempt function.

38 (2) The term “exempt function” means the function of
39 influencing or attempting to influence the selection, nomination,
40 election, or appointment of any individual to any federal, state, or

1 *local public office or office in a political organization, or the*
 2 *election of Presidential or Vice Presidential electors, whether or*
 3 *not such individual or electors are selected, nominated, elected,*
 4 *or appointed. The term includes the making of expenditures relating*
 5 *to an office described in the preceding sentence which, if incurred*
 6 *by the individual, would be allowable as a deduction under Section*
 7 *162(a) of the Internal Revenue Code.*

8 (3) *The term “contributions” has the meaning given to that term*
 9 *by Section 271(b)(2) of the Internal Revenue Code.*

10 (4) *The term “expenditures” has the meaning given to that term*
 11 *by Section 271(b)(3) of the Internal Revenue Code.*

12 (f) *For purposes of paragraph (1) of subdivision (e), a separate*
 13 *segregated fund (within the meaning of Section 610 of Title 18 of*
 14 *the United States Code or of any similar state statute, or within*
 15 *the meaning of any state statute that permits the segregation of*
 16 *dues money for exempt functions, within the meaning of paragraph*
 17 *(2) of subdivision (e)) that is maintained by an organization*
 18 *described in Sections 27701a to 27701p, inclusive, or Section*
 19 *27701s that is exempt from tax under Section 27701 shall be*
 20 *treated as a separate organization.*

21 (g) (1) *For purposes of this section, a fund established and*
 22 *maintained by an individual who holds, has been elected to, or is*
 23 *a candidate (within the meaning of paragraph (3)) for nomination*
 24 *or election to, any federal, state, or local elective public office for*
 25 *use by that individual exclusively for the preparation and*
 26 *circulation of that individual’s newsletter shall, except as provided*
 27 *in paragraph (2), be treated as if that fund constituted a political*
 28 *organization.*

29 (2) *In the case of any fund described in paragraph (1), the*
 30 *exempt function shall be only the preparation and circulation of*
 31 *the newsletter.*

32 (3) *For purposes of paragraph (1), “candidate” means with*
 33 *respect to any federal, state, or local elective public office, an*
 34 *individual who does both of the following:*

35 (A) *Publicly announces that he or she is a candidate for*
 36 *nomination or election to that office.*

37 (B) *Meets the qualifications prescribed by law to hold that office.*

38 (h) *The requirements set forth in subdivisions (a), (b), and (c)*
 39 *of Section 27701 shall not apply to a political organization or*
 40 *newsletter fund described in this section.*

1 (i) *The requirements set forth in Section 27772 or Section 27774*
2 *shall not apply to a political organization or newsletter fund.*
3 *Further, the requirements set forth in Sections 18505, 18506, and*
4 *18601 shall not apply to a political organization or newsletter*
5 *fund described in this section, except that if it has political*
6 *organization net receipts for any taxable year, the political*
7 *organization shall be required to file income tax returns or*
8 *statements as determined by the Franchise Tax Board under*
9 *Chapter 2 (commencing with Section 27101).*

10 27701s. (a) *An employee-funded pension trust described in*
11 *Section 501(c)(18) of the Internal Revenue Code, except as*
12 *otherwise provided.*

13 (b) *The last sentence in Section 501(c)(18) of the Internal*
14 *Revenue Code, relating to excess contributions under Section 4979*
15 *of the Internal Revenue Code, shall not apply.*

16 27701t. (a) *A homeowners' association organized and*
17 *operated to provide for the acquisition, construction, management,*
18 *maintenance, and care of residential association property if all of*
19 *the following apply:*

20 (1) *Sixty percent or more of the gross income of the organization*
21 *for the taxable year consists solely of amounts received as*
22 *membership dues, fees, and assessments from either of the*
23 *following:*

24 (A) *Tenant-stockholders or owners of residential units,*
25 *residences, or lots.*

26 (B) *Owners of time-share rights to use, or time-share ownership*
27 *interests in, association property in the case of a time-share*
28 *association.*

29 (2) *Ninety percent or more of the expenditures of the*
30 *organization for the taxable year are expenditures for the*
31 *acquisition, construction, management, maintenance, and care of*
32 *association property and, in the case of a time-share association,*
33 *for activities provided to or on behalf of members of the*
34 *association.*

35 (3) *No part of the net earnings inures (other than by providing*
36 *management, maintenance, and care of association property or*
37 *by a rebate of excess membership dues, fees, or assessments) to*
38 *the benefit of any private shareholder or individual.*

39 (4) *Amounts received as membership dues, fees, and assessments*
40 *not expended for association purposes during the taxable year are*

1 transferred to and held in trust to provide for the management,
2 maintenance, and care of association property and common areas.

3 (b) The term “association property” means:

4 (1) Property held by the organization.

5 (2) Property held in common by the members of the
6 organization.

7 (3) Property within the organization privately held by the
8 members of the organization. In the case of a time-share
9 association, “association property” includes property in which
10 the time-share association, or members of the association, have
11 rights arising out of recorded easements, covenants, or other
12 recorded instruments to use property related to the time-share
13 project.

14 (c) A homeowners’ association shall be subject to tax under
15 this part with respect to its “homeowners’ association net
16 receipts,” and those net receipts shall be subject to tax as provided
17 by Chapter 2 (commencing with Section 27101).

18 (1) For purposes of this section, the term “homeowners’
19 association net receipts” of any organization for any taxable year
20 means an amount equal to the excess over one hundred dollars
21 (\$100), if any, of the gross receipts for the taxable year (excluding
22 any exempt function receipts), divided by the deductions allowed
23 by this part that are directly connected with the production of the
24 gross receipts (excluding exempt function receipts).

25 (2) For purposes of this section, the term “exempt function gross
26 receipts” means any amount received as membership fees, dues,
27 and assessments from tenant-shareholders or owners of residential
28 units, residences, or lots, or owners of time-share rights to use, or
29 time-share ownership interests in, association property in the case
30 of a time-share association.

31 (d) The term “homeowners’ association” includes a
32 condominium management association, a residential real estate
33 management association, a time-share association, and a
34 cooperative housing corporation.

35 (e) “Cooperative housing corporation” includes, but is not
36 limited to, a limited-equity housing cooperative, as defined in
37 Section 33007.5 of the Health and Safety Code, organized either
38 as a nonprofit public benefit corporation pursuant to Part 2
39 (commencing with Section 5110) of Division 2 of Title 1 of the
40 Corporations Code, or a nonprofit mutual benefit corporation

1 pursuant to Part 3 (commencing with Section 7110) of Division 2
2 of Title 1 of the Corporations Code.

3 (f) The term “time-share association” means any organization
4 (other than a condominium management association) organized
5 and operated to provide for the acquisition, construction,
6 management, maintenance, and care of association property if
7 any member thereof holds a time-share right to use, or a time-share
8 ownership interest in, real property constituting association
9 property.

10 27701u. An organization is operated exclusively for exempt
11 purposes listed in Section 27701f and its net earnings are devoted
12 exclusively to charitable purposes if that organization is a nonprofit
13 public benefit corporation organized under Part 2 (commencing
14 with Section 5110) of Division 2 of Title 1 of the Corporations
15 Code, and if the specific and primary purpose for which the
16 corporation is formed is to render financial assistance to
17 government by financing, refinancing, acquiring, constructing,
18 improving, leasing, selling, or otherwise conveying property of
19 any kind to government. This financing ability shall be limited to
20 the issuance of certificates of participation, or similar security
21 arrangements. For purposes of this section, “government” means
22 this state, a city, city and county, county, school district, board of
23 education, public corporation, hospital district, and any other
24 special district. An organization is not organized exclusively for
25 the exempt purposes referred to in the first paragraph unless its
26 assets are irrevocably dedicated to one or more purposes listed
27 in Section 27701f. Dedication of assets requires that in the event
28 of dissolution of an organization or the impossibility of performing
29 the specific organizational purposes, including default of lease
30 payments, the assets would continue to be devoted to exempt
31 purposes. Assets shall be deemed irrevocably dedicated to exempt
32 purposes if the articles of organization provide that upon
33 dissolution the assets will be distributed to an organization that
34 is exempt under this section, Section 27701d, or Section 27701f,
35 or under Section 501(c)(3) or Section 501(c)(4) of the Internal
36 Revenue Code or to the federal government, or to a state or local
37 government for public purposes; or by a provision in the articles
38 of organization, satisfactory to the Franchise Tax Board, that the
39 property will be distributed in trust for exempt purposes; or by
40 establishing that the assets are irrevocably dedicated to exempt

1 *purposes by operation of law. Any organization that has had its*
2 *exemption revoked by the Franchise Tax Board for failure to*
3 *comply with Section 27701f may request a further review of its*
4 *status under this section.*

5 *27701v. (a) An organization of owners of manufactured homes*
6 *or mobilehomes, who are tenants in a mobilehome park, formed*
7 *for the purpose of purchasing the mobilehome park to convert it*
8 *to condominium, stock cooperative, or other resident ownership*
9 *interests.*

10 *(b) An organization shall not fail to meet the requirements of*
11 *subdivision (a) merely because it manages, maintains, or cares*
12 *for the mobilehome park it has purchased.*

13 *27701w. A veterans' organization, as defined by Section*
14 *501(c)(19) of the Internal Revenue Code.*

15 *27701x. (a) A corporation or trust described in Section*
16 *501(c)(25) of the Internal Revenue Code, relating to certain*
17 *title-holding companies.*

18 *(b) For purposes of applying Section 501(c)(25) of the Internal*
19 *Revenue Code under this section, the term "corporation" includes*
20 *a limited liability company that is classified as a partnership.*

21 *27701y. A credit union as defined in Section 14002 of the*
22 *Financial Code. In addition, those credit unions are exempt from*
23 *all other taxes and licenses, state, county, and municipal, imposed*
24 *upon those credit unions, except taxes upon their real property,*
25 *local utility user taxes, sales and use taxes, state energy resources*
26 *surcharges, state emergency telephone users surcharges, unrelated*
27 *business net receipts taxes pursuant to Section 27731, motor*
28 *vehicle and other vehicle registration license fees, and any other*
29 *tax or license fee imposed by the state upon vehicles, motor*
30 *vehicles, or the operation thereof.*

31 *27701z. An organization established pursuant to Section 5005.1*
32 *of the Corporations Code by three or more corporations as an*
33 *arrangement for the pooling of self-insured claims or losses of*
34 *those corporations.*

35 *27702. Section 502 of the Internal Revenue Code, relating to*
36 *feeder organizations, shall apply, except as otherwise provided.*

37 *(a) Exemption shall not be allowed to any organization on the*
38 *basis that all of its profits are payable to another organization*
39 *exempt from taxation under either Section 501 of the Internal*

1 Revenue Code or this article, if that business activity is being
2 conducted by a separate organization.

3 (b) The reference to Section 501 of the Internal Revenue Code,
4 relating to exemption, shall be modified to refer to Section 27701.

5 (c) The reference to Sections 512 and 512(b)(3) of the Internal
6 Revenue Code, relating to the exclusion of the deriving of rents
7 from the definition of “trade or business,” shall be modified to
8 refer to Section 27732.

9 27703. (a) No exemption shall be allowed under this article
10 to any charitable corporation as defined in Sections 12582.1 and
11 12583 of the Government Code for any year or years for which it
12 fails to file with the Attorney General, on or before the due date,
13 any registration or periodic report required by Article 7
14 (commencing with Section 12580) of Chapter 6 of Part 2 of
15 Division 3 of Title 2 of the Government Code.

16 (b) The exemption shall be disallowed under this section only
17 after the Attorney General has notified the Franchise Tax Board
18 in writing that a charitable corporation subject to the provisions
19 of subdivision (a) has failed to file any such registration or periodic
20 report on or before the due date thereof.

21 (c) If an exemption is disallowed under this section, the
22 exemption may be reinstated when the registration or periodic
23 reports are filed.

24 (d) The Franchise Tax Board may make any regulations that it
25 deems necessary to effectuate the purposes of this section.

26 27703.5. Section 501(p) of the Internal Revenue Code, relating
27 to suspension of tax-exempt status of terrorist organizations, shall
28 apply, except as otherwise provided:

29 (a) References to Section 501(a) of the Internal Revenue Code
30 shall be modified to refer to Section 27701.

31 (b) Section 501(p)(4) of the Internal Revenue Code is modified
32 by substituting the phrase “under Part 10 (commencing with
33 Section 17001) and this part” for the phrase “under any provision
34 of this title, including Sections 170, 545(b)(2), 556(b)(2), 642(c),
35 2055, 2106(a)(2), and 2522” contained therein.

36 (c) This section shall apply only during the period described in
37 Section 501(p)(3) of the Internal Revenue Code that the federal
38 tax exemption of the organization described in Section 501(p)(2)
39 of the Internal Revenue Code is suspended for federal income tax
40 purposes under Section 501(p)(1) of the Internal Revenue Code.

1 (d) Section 501(p)(5) of the Internal Revenue Code shall not
2 apply and in lieu thereof, notwithstanding any other provision of
3 law, no organization or other person may challenge a suspension
4 under this section, a designation or identification described in
5 Section 501(p)(2) of the Internal Revenue Code, the period of
6 suspension described in Section 501(p)(3) of the Internal Revenue
7 Code, or a denial of a deduction under Section 501(p)(4) of the
8 Internal Revenue Code as modified in subdivision (b) in any
9 administrative or judicial proceeding relating to the California
10 tax liability of the organization or other person.

11 (e) (1) Credit or refund (with interest) with respect to an
12 overpayment shall be made if all of the following apply with respect
13 to that overpayment:

14 (A) The tax exemption of any organization described in Section
15 501(p)(2) of the Internal Revenue Code is suspended under this
16 section.

17 (B) Each designation and identification described in Section
18 501(p)(2) of the Internal Revenue Code which has been made with
19 respect to that organization is determined to be erroneous under
20 Section 501(p)(6) of the Internal Revenue Code for federal income
21 tax purposes.

22 (C) The erroneous designations and identifications result in an
23 overpayment of income tax for any taxable year by that
24 organization.

25 (2) If the credit or refund of any overpayment of tax described
26 in subparagraph (C) of paragraph (1) is prevented at any time by
27 the operation of any law or rule of law (including *res judicata*),
28 the credit or refund may nevertheless be allowed or made if the
29 claim therefor is filed before the close of the one-year period
30 beginning on the date of the last determination described in
31 subparagraph (B) of paragraph (1).

32 27704. Section 501(e) of the Internal Revenue Code, relating
33 to cooperative hospital service organizations, shall apply, except
34 as otherwise provided.

35 (a) References to Section 501(c)(3) of the Internal Revenue
36 Code, relating to charitable organizations, shall be modified to
37 refer to Section 27701d.

38 (b) References to Section 501(a) of the Internal Revenue Code,
39 relating to exemptions, shall be modified to refer to Section 27701.

1 (c) *The services which may be provided under Section 501(e)(1)*
2 *of the Internal Revenue Code shall include laundry services.*

3 (d) *Section 501(e)(1)(B)(iii) of the Internal Revenue Code is*
4 *modified by substituting the phrase “owned and operated by the*
5 *United States, the State, or a county or political subdivision thereof,*
6 *or an agency or instrumentality of any of the foregoing” for the*
7 *phrase “owned and operated by the United States, a State, the*
8 *District of Columbia, or a possession of the United States, or a*
9 *political subdivision or an agency or instrumentality of any of the*
10 *foregoing.”*

11 (e) *References to Section 170(b)(1)(A)(iii) of the Internal*
12 *Revenue Code, relating to the deductibility of contributions to*
13 *hospitals, shall be modified to refer to subdivision (e) of Section*
14 *27736.*

15 27704.3. *Section 501(o) of the Internal Revenue Code, relating*
16 *to treatment of hospitals participating in provider-sponsored*
17 *organizations, shall apply, except that the reference to Section*
18 *501(c)(3) of the Internal Revenue Code, relating to charitable*
19 *organizations, shall be modified to refer to Section 27701d.*

20 27704.4. *Section 501(k) of the Internal Revenue Code, relating*
21 *to the treatment of certain organizations providing care of children,*
22 *shall apply, except as otherwise provided.*

23 (a) *The reference to Section 501(c)(3) of the Internal Revenue*
24 *Code, relating to charitable organizations, shall be modified to*
25 *refer to Section 27701d.*

26 (b) *The reference to Section 2522(a)(2) of the Internal Revenue*
27 *Code, relating to the computation of taxable gifts, or Section 2055*
28 *of the Internal Revenue Code, relating to transfers for public,*
29 *charitable, and religious uses, shall not apply.*

30 27704.5. *Section 501(h) of the Internal Revenue Code, relating*
31 *to expenditures by public charities engaged in activities to*
32 *influence legislation, shall apply, except as otherwise provided.*

33 (a) *The reference to Section 501(a) of the Internal Revenue*
34 *Code, relating to exemption from taxation, shall be modified to*
35 *refer to Section 27701.*

36 (b) *The reference to Section 501(c)(3) of the Internal Revenue*
37 *Code, relating to charitable organizations, shall be modified to*
38 *refer to Section 27701d.*

39 27704.6. *Section 504 of the Internal Revenue Code, relating*
40 *to status after organization ceases to qualify for exemption under*

1 *Section 501(c)(3) because of substantial lobbying or because of*
2 *political activities, shall apply, except as otherwise provided.*

3 *(a) The reference to Section 501(a) of the Internal Revenue*
4 *Code, relating to exemption from taxation, shall be modified to*
5 *refer to Section 27701.*

6 *(b) The reference to Section 501a(c)(3) of the Internal Revenue*
7 *Code, relating to charitable organizations, shall be modified to*
8 *refer to Section 27701d.*

9 *(c) The reference to Section 501(c)(4) of the Internal Revenue*
10 *Code, relating to civic leagues, social welfare organizations, and*
11 *local associations of employees, shall be modified to refer to*
12 *Section 27701f.*

13 *27705. (a) (1) An organization described in Section 27701i*
14 *(voluntary employee's beneficiary associations) or 27701q*
15 *(qualified group legal service plans) which is part of a plan of an*
16 *employer shall not be exempt from tax under Section 27701, unless*
17 *that plan meets the requirements of Section 505(b) of the Internal*
18 *Revenue Code.*

19 *(2) Paragraph (1) shall not apply to any organization described*
20 *in Section 505(a)(2) of the Internal Revenue Code.*

21 *(b) A copy of any notice filed with the Secretary of the Treasury,*
22 *pursuant to Section 505(c) of the Internal Revenue Code, relating*
23 *to application for tax-exempt status, shall be filed at the same time*
24 *and in the same manner with the Franchise Tax Board.*

25 *27706. Any exemption from the net receipts tax under Chapter*
26 *2 (commencing with Section 27101) granted by any statute of this*
27 *state on or after January 1, 1985, for an organization that is an*
28 *instrumentality of this state, shall be provided for in this part.*

29 *27707. (a) Except as provided in subdivision (b), the status of*
30 *any organization as a private foundation shall be terminated only*
31 *if either of the following occurs:*

32 *(1) The organization notifies the Franchise Tax Board (at such*
33 *time and in such manner as the Franchise Tax Board may by*
34 *regulations prescribe) of its intent to accomplish such termination.*

35 *(2) The organization has been terminated by the Attorney*
36 *General of this state or by action taken pursuant to Section 507*
37 *of the Internal Revenue Code.*

38 *(b) (1) The status as a private foundation of any organization*
39 *shall be terminated only if either of the following occurs:*

- 1 (A) *The organization distributes all of its net assets to one or*
2 *more organizations described below (other than clause (vii), (viii),*
3 *(ix), or (x)) each of which has been in existence and so described*
4 *for a continuous period of at least 60 calendar months immediately*
5 *preceding the distribution and exempt from tax under Section*
6 *27701d of the Revenue and Taxation Code or Section 501(c)(3)*
7 *of the Internal Revenue Code during the last 60 months, or:*
- 8 (i) *A church or a convention or association of churches,*
9 (ii) *An educational organization that normally maintains a*
10 *regular faculty and curriculum and normally has a regularly*
11 *enrolled body of pupils or students in attendance at the place where*
12 *its educational activities are regularly carried on,*
13 (iii) *An organization the principal purpose or functions of which*
14 *are the providing of medical or hospital care or medical education*
15 *or medical research, if the organization is a hospital, or if the*
16 *organization is a medical research organization directly engaged*
17 *in the continuous active conduct of medical research in conjunction*
18 *with a hospital, and during the calendar year in which the*
19 *contribution is made the organization is committed to spend such*
20 *contributions for the research before January 1 of the fifth calendar*
21 *year which begins after the date the contribution is made.*
- 22 (iv) *An organization that normally receives a substantial part*
23 *of its support (exclusive of income received in the exercise or*
24 *performance by such organization of its charitable, educational,*
25 *or other purpose or function constituting the basis for its exemption*
26 *under Section 27701d) from the United States or any state or*
27 *political subdivision thereof or from direct or indirect contributions*
28 *from the general public, and that is organized and operated*
29 *exclusively to receive, hold, invest, and administer property and*
30 *to make expenditures to or for the benefit of a college or university*
31 *that is an organization referred to in clause (ii) of this*
32 *subparagraph and that is an agency or instrumentality of a state*
33 *or political subdivision thereof, or that is owned or operated by a*
34 *state or political subdivision thereof or by an agency or*
35 *instrumentality of one or more states or political subdivisions,*
36 (v) *A governmental unit referred to in Section 170(c)(1) of the*
37 *Internal Revenue Code,*
38 (vi) *An organization referred to in Section 170(c)(2) of the*
39 *Internal Revenue Code that normally receives a substantial part*
40 *of its support (exclusive of income received in the exercise or*

performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 27701d) from a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code or from direct or indirect contributions from the general public,

(vii) A private operating foundation (as defined in Section 4942(j) (3) of the Internal Revenue Code),

(viii) Any other private foundation (as defined in Section 509(a) of the Internal Revenue Code) that, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in Section 4942(g) of the Internal Revenue Code, as amended by Public Law 94-455, without regard to paragraph (3) thereof), that are treated, after the application of Section 4942(g)(3) of the Internal Revenue Code as distributions out of corpus (in accordance with Section 4942(h) of the Internal Revenue Code) in an amount equal to 100 percent of the contributions, and with respect to which the taxpayer maintains adequate records or other sufficient evidence from the foundation showing that the foundation made the qualifying distributions,

(ix) A private foundation all of the contributions to which are pooled in a common fund and which would be described in paragraph (3) of Section 509(a) of the Internal Revenue Code but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of Section 509(a) of the Internal Revenue Code, of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in paragraph (1), of the corpus in the common fund shall apply only if all the income of the common fund is required to be (and is) distributed to one or more organizations described in paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of the organizations not later than one year after his or her death or after the death of his or her surviving spouse if he or she has the right to designate the recipients of the corpus, and

1 (x) An organization described in paragraph (2) or (3) of Section
2 509(a) of the Internal Revenue Code.

3 (B) The organization meets the requirements of Section
4 507(b)(1)(B) or paragraph (1), (2), or (3) of Section 509(a) of the
5 Internal Revenue Code, whichever applies, and furnishes copies
6 of its federal notice of termination of its private foundation status
7 to the Franchise Tax Board.

8 (2) For purposes of this part, in the case of a transfer of assets
9 of any private foundation to another private foundation pursuant
10 to any liquidation, merger, redemption, recapitalization, or other
11 adjustment, organization, or reorganization, the transferee
12 foundation shall not be treated as a newly created organization.

13 27708. (a) For purposes of this part, unless otherwise indicated
14 in context, the term “an organization exempt from tax” shall mean
15 an organization that has satisfied the provisions of Section 27701.

16 (b) Except as provided in subdivision (c), any organization
17 (including an organization in existence on December 31, 1970)
18 that is described in Section 27701d and that does not notify the
19 Franchise Tax Board at the time and the manner as the Franchise
20 Tax Board may prescribe, that it is not a private foundation shall
21 be presumed to be a private foundation. The time prescribed for
22 giving notice under this subdivision shall not expire before the
23 90th day after the day on which the regulations first prescribed
24 under this subdivision become final.

25 (c) Subdivision (b) shall not apply to the following:

26 (1) Churches, their integrated auxiliaries, and conventions or
27 associations of churches.

28 (2) Any organization that is not a private foundation (as defined
29 in Section 27709).

30 (3) The Franchise Tax Board may by regulations exempt (to
31 the extent and subject to those conditions as may be prescribed in
32 the regulations) the following from subdivision (b):

33 (A) Educational organizations that normally maintain a regular
34 faculty and curriculum and normally have a regularly enrolled
35 body of pupils or students in attendance at the place where their
36 educational activities are regularly carried on.

37 (B) Any other class of organizations with respect to which the
38 Franchise Tax Board determines that full compliance with
39 subdivision (b) is not necessary to the efficient administration of
40 this part relating to private foundations.

1 (d) (1) A private foundation shall not be exempt from taxation
2 under Section 27701d unless its governing instrument includes
3 provisions the effects of which are both of the following:

4 (A) To require its income for each taxable year to be distributed
5 at the time and in the manner as not to subject the foundation to
6 tax under Section 4942 of the Internal Revenue Code, as amended
7 by Public Law 94-455.

8 (B) To prohibit the foundation from engaging in any act of
9 self-dealing (as defined in Section 4941 of the Internal Revenue
10 Code) from retaining any excess business holdings (as defined in
11 Section 4943 of the Internal Revenue Code), from making any
12 investments in the manner as to subject the foundation to tax under
13 Section 4944 of the Internal Revenue Code.

14 (2) In the case of any organization organized before January
15 1, 1970, paragraph (1) shall not apply to the following:

16 (A) To any taxable year beginning before January 1, 1972.

17 (B) To any period after December 31, 1971, during the pendency
18 of any judicial proceeding begun before January 1, 1972, by the
19 private foundation which is necessary to reform, or to excuse such
20 foundation from compliance with, its governing instrument or any
21 other instrument in order to meet the requirements of paragraph
22 (1).

23 (C) To any period after the termination of any judicial
24 proceeding described in subparagraph (B) during which its
25 governing instrument or any other instrument does not permit it
26 to meet the requirements of paragraph (1).

27 (3) This subdivision shall not apply to require the inclusion in
28 governing instruments of any provisions inconsistent with this
29 subdivision.

30 (e) Notwithstanding any of the requirements of this section, if
31 they are determined to be met under federal law they are also met
32 for state purposes.

33 27709. (a) For the purposes of this part the term “private
34 foundation” means a domestic or foreign organization defined in
35 the Internal Revenue Code as a private foundation.

36 (b) For the purposes of this part, if an organization is a private
37 foundation (within the meaning of subdivision (a)) on December
38 31, 1970, or becomes a private foundation on any subsequent date,
39 the organization shall be treated as a private foundation for all

1 *periods after December 31, 1970, or after that subsequent date,*
2 *unless its status as such is terminated.*

3 *(c) For purposes of this part, an organization the status of which*
4 *as a private foundation is terminated shall be treated as an*
5 *organization created on the day after the date of the termination,*
6 *except in the case of a transfer of assets of any private foundation*
7 *to another private foundation pursuant to any liquidation, merger,*
8 *redemption, recapitalization, or other adjustment, organization,*
9 *or reorganization, the transferee shall not be treated as a newly*
10 *created organization.*

11 *(d) For purposes of this part, the term “support” includes, but*
12 *is not limited to, the following:*

13 *(1) Gifts, grants, contributions, or membership fees.*

14 *(2) Gross receipts from admissions, sales of merchandise,*
15 *performance of services, or furnishing of facilities in any activity*
16 *that is not an unrelated trade or business (within the meaning of*
17 *Section 27734).*

18 *(3) Net receipts from unrelated business activities, whether or*
19 *not such activities are carried on regularly as a trade or business.*

20 *(4) Gross investment receipts (as defined in subdivision (e)).*

21 *(5) Tax revenues levied for the benefit of an organization and*
22 *either paid to or expended on behalf of the organization.*

23 *(6) The value of services or facilities (exclusive of services or*
24 *facilities generally furnished to the public without charge)*
25 *furnished by a governmental unit referred to in Section 170(c)(1)*
26 *of the Internal Revenue Code to an organization without charge.*
27 *The term does not include any gain from the sale or other*
28 *disposition of property that would be considered as gain from the*
29 *sale or exchange of a capital asset, or the value of exemption from*
30 *any federal, state, or local tax or any similar benefit.*

31 *(e) For purposes of this section, the term “gross investment*
32 *receipts” means the gross amount of interest, dividends, rents,*
33 *and royalties, but not including any such receipts to the extent*
34 *included in computing the tax imposed by Section 27731.*

35 *27710. Any organization exempted from taxes imposed under*
36 *this part pursuant to this article shall not be disqualified for the*
37 *exemption on the basis that it conducts bingo games pursuant to*
38 *Section 326.5 of the Penal Code, provided that the proceeds from*
39 *those games are used exclusively for charitable purposes.*

1 27711. Section 529 of the Internal Revenue Code, relating to
2 qualified state tuition programs, shall apply, except as otherwise
3 provided.

4 (a) Section 529(a) of the Internal Revenue Code is modified as
5 follows:

6 (1) By substituting the phrase “under Part 10 (commencing
7 with Section 17001) and this part” in lieu of the phrase “under
8 this subtitle.”

9 (2) By substituting “Article 2 (commencing with Section 27731)”
10 in lieu of “section 511.”

11 (b) A copy of the report required to be filed with the Secretary
12 of the Treasury under Section 529(d) of the Internal Revenue Code
13 shall be filed with the Franchise Tax Board at the same time and
14 in the same manner as specified in that section.

15 27711.5. The Golden State Scholarshare Trust, established
16 pursuant to Article 19 (commencing with Section 69980) of Chapter
17 2 of Part 42 of the Education Code, is an instrumentality of this
18 state and the receipts of the Scholarshare trust shall be exempt
19 from taxes imposed under this part. The Scholarshare trust is
20 established and shall be maintained as a qualified state tuition
21 program as defined in Section 529 of the Internal Revenue Code.

22 27712. Section 530 of the Internal Revenue Code, relating to
23 Coverdell education savings accounts, shall apply, except as
24 otherwise provided.

25 (a) Section 530(a) of the Internal Revenue Code is modified as
26 follows:

27 (1) By substituting the phrase “under Part 10 (commencing
28 with Section 17001) and this part” in lieu of the phrase “under
29 this subtitle.”

30 (2) By substituting “Article 2 (commencing with Section 27731)”
31 in lieu of “section 511.”

32 (b) Section 530(d) of the Internal Revenue Code is modified as
33 follows:

34 (1) By substituting the phrase “under Part 10 (commencing
35 with Section 17001) in the manner as provided in Section 72(b)
36 of the Internal Revenue Code, as modified by Part 10” in lieu of
37 the phrase “in the manner as provided in Section 72(b)” in Section
38 530(d)(1) of the Internal Revenue Code.

39 (2) (A) By substituting the phrase “tax imposed by Part 10
40 (commencing with Section 17001)” in lieu of the phrase “tax

1 *imposed by this chapter” in Section 530(d)(4)(A) of the Internal*
2 *Revenue Code.*

3 *(B) By substituting the phrase “increased by 2 1/2 percent” in*
4 *lieu of the phrase “increased by 10 percent” in Section*
5 *530(d)(4)(A) of the Internal Revenue Code.*

6 *(C) By substituting the phrase “shall be included in the*
7 *contributor’s gross income under Part 10 (commencing with*
8 *Section 17001) or this part” in lieu of the phrase “shall be included*
9 *in gross income” in Section 530(d)(4)(C) of the Internal Revenue*
10 *Code.*

11 *(c) For purposes of Part 10 (commencing with Section 17001)*
12 *and this part, in the case of a custodial account treated as a trust*
13 *by reason of Section 530(g) of the Internal Revenue Code, the*
14 *custodian of that account shall be treated as the trustee thereof.*

15 *(d) A copy of the report, which is required to be filed with the*
16 *Secretary of the Treasury under Section 530(h) of the Internal*
17 *Revenue Code, shall be filed with the Franchise Tax Board at the*
18 *same time and in the same manner as specified in that section.*

19
20 *Article 2. Taxation of Unrelated Business Net Receipts of*
21 *Certain Article 1 Organizations*
22

23 *27731. Every organization or trust exempt under this chapter,*
24 *except as provided in this article, is subject to the tax imposed*
25 *upon its unrelated business net receipts, as defined in Section*
26 *27732, as follows:*

27 *(a) Business entities, including business trusts, are subject to*
28 *the tax imposed under Section 27101.*

29 *(b) Trusts, other than business trusts, are subject to the tax*
30 *imposed by subdivision (e) of Section 17041.*

31 *27732. Section 512 of the Internal Revenue Code, relating to*
32 *unrelated business taxable income, shall apply, except as otherwise*
33 *provided.*

34 *(a) (1) Section 512(a)(1) of the Internal Revenue Code shall*
35 *be modified as follows:*

36 *(A) By substituting “gross business receipts,” as defined in this*
37 *part, for “gross income” each place it appears.*

38 *(B) By substituting “deductions allowed by this part” for*
39 *“deductions allowed by this chapter.”*

1 (2) *Section 512(a)(2) of the Internal Revenue Code, relating to*
2 *special rules for foreign organizations, shall not be applicable.*

3 (b) *Section 512(a)(3) of the Internal Revenue Code, relating to*
4 *special rules applicable to certain organizations, shall be modified*
5 *as follows:*

6 (1) *The reference to Section 501(c)(7) of the Internal Revenue*
7 *Code, relating to clubs organized for pleasure, recreation, and*
8 *other nonprofitable purposes, shall be modified to refer to Section*
9 *27701g.*

10 (2) *The reference to Section 501(c)(9) of the Internal Revenue*
11 *Code, relating to voluntary employees' beneficiary associations,*
12 *shall be modified to refer to Section 27701i.*

13 (3) *The reference to Section 501(c)(17) of the Internal Revenue*
14 *Code, relating to trusts providing for payment of supplemental*
15 *unemployment compensation benefits, shall be modified to refer*
16 *to Section 27701n.*

17 (4) *The reference to Section 501(c)(20) of the Internal Revenue*
18 *Code, relating to qualified group legal services plans, shall be*
19 *modified to refer to Section 27701q.*

20 (c) *Section 512(d) of the Internal Revenue Code, relating to*
21 *treatment of dues of agricultural or horticultural organizations,*
22 *shall be modified by substituting "Section 27701a" in lieu of*
23 *"Section 501(c)(5)" of the Internal Revenue Code.*

24 27734. (a) *Section 513 of the Internal Revenue Code, relating*
25 *to unrelated trade or business, shall apply, except as otherwise*
26 *provided.*

27 (b) *Section 513(g) of the Internal Revenue Code, relating to*
28 *certain pole rentals, shall not apply.*

29 27735. (a) *Section 514 of the Internal Revenue Code, relating*
30 *to unrelated debt-financed income, shall apply, except as otherwise*
31 *provided.*

32 (b) *An interest in a participation agreement, as defined in*
33 *subdivision (i) of Section 69980 of the Education Code, shall not*
34 *be treated as debt.*

35 27736. *Sections 27736.1 to 27736.4, inclusive, shall apply to*
36 *any organization described in Section 27701d or Section 27701n*
37 *except the following:*

38 (a) *A religious organization (other than a trust).*

39 (b) *An educational organization that normally maintains a*
40 *regular faculty and curriculum and normally has a regularly*

1 *enrolled body of pupils or students in attendance at the place where*
2 *its educational activities are regularly carried on.*

3 *(c) An organization that normally receives a substantial part*
4 *of its support (exclusive of income received in the exercise or*
5 *performance by such organization of its charitable, educational,*
6 *or other purpose or function constituting the basis for its exemption*
7 *under Section 27701d) from the United States or any state or*
8 *political subdivision thereof or from direct or indirect contributions*
9 *from the general public.*

10 *(d) An organization that is operated, supervised, controlled, or*
11 *principally supported by a religious organization (other than a*
12 *trust) that is itself not subject to this article.*

13 *(e) An organization the principal purposes or functions of which*
14 *are the providing of medical or hospital care or medical education*
15 *or medical research.*

16 27736.1. *(a) For the purposes of this article, the term*
17 *“prohibited transaction” means any transaction in which an*
18 *organization subject to this article--*

19 *(1) Lends any part of its income or corpus, without the receipt*
20 *of adequate security and a reasonable rate of interest, to;*

21 *(2) Pays any compensation, in excess of a reasonable allowance*
22 *for salaries or other compensation for personal services actually*
23 *rendered, to;*

24 *(3) Makes any part of its services available on a preferential*
25 *basis, to;*

26 *(4) Makes any substantial purchase of securities or any other*
27 *property, for more than adequate consideration in money or*
28 *money’s worth, from;*

29 *(5) Sells any substantial part of its securities or other property,*
30 *for less than an adequate consideration in money or money’s*
31 *worth, to; or*

32 *(6) Engages in any other transaction that results in a substantial*
33 *diversion of its income or corpus to;*

34 *The creator of the organization (if a trust); a person who has*
35 *made a substantial contribution to the organization; a member of*
36 *the family (as defined in Section 267(c)(4) of the Internal Revenue*
37 *Code) of an individual who is the creator of that trust or who has*
38 *made a substantial contribution to that organization; or a*
39 *corporation controlled by that creator or person through the*
40 *ownership, directly or indirectly, of 50 percent or more of the total*

1 combined voting power of all classes of stock entitled to vote or
2 50 percent or more of the total value of shares of all classes of
3 stock of the corporation.

4 (b) For purposes of subdivision (a), a bond, debenture, note,
5 or certificate or other evidence of indebtedness (hereinafter in this
6 section referred to as "obligation") acquired by a trust described
7 in Section 27701n shall not be treated as a loan made without the
8 receipt of adequate security if:

9 (1) The obligation is acquired:

10 (A) On the market, either (i) at the price of the obligation
11 prevailing on a national securities exchange that is registered with
12 the Securities and Exchange Commission, or (ii) if the obligation
13 is not traded on a national securities exchange, at a price not less
14 favorable to the trust than the offering price for the obligation as
15 established by current bid and asked prices quoted by persons
16 independent of the issuer.

17 (B) From an underwriter, at a price (i) not in excess of the public
18 offering price for the obligation as set forth in a prospectus or
19 offering circular filed with the Securities and Exchange
20 Commission, and (ii) at which a substantial portion of the same
21 issue is acquired by persons independent of the issuer.

22 (C) Directly from the issuer, at a price not less favorable to the
23 trust than the price paid currently for a substantial portion of the
24 same issue by persons independent of the issuer.

25 (2) Immediately following acquisition of that obligation both
26 of the following apply:

27 (A) Not more than 25 percent of the aggregate amount of
28 obligations issued in that issue and outstanding at the time of
29 acquisition is held by the trust.

30 (B) At least 50 percent of the aggregate amount referred to in
31 subparagraph (A) is held by persons independent of the issuer.

32 (3) Immediately following acquisition of the obligation, not
33 more than 25 percent of the assets of the trust is invested in
34 obligations of persons described in subdivision (a).

35 (4) In the application of paragraph (1) of subdivision (a), if a
36 trust described in Section 27701n forming part of a supplemental
37 unemployment compensation benefit plan lends any money to
38 another trust described in Section 27701n forming part of the same
39 plan, that loan shall not be treated as an indebtedness of the
40 borrowing trust, except to the extent that the loaning trust:

1 (A) *Incurs any indebtedness in order to make that loan.*

2 (B) *Incurred indebtedness before the making of that loan which*
3 *would not have been incurred but for the making of that loan.*

4 (C) *Incurred indebtedness after the making of that loan which*
5 *would not have been incurred but for the making of that loan and*
6 *that was reasonably foreseeable at the time of making that loan.*

7 (c) *Subdivision (a) shall not apply to a loan made by a trust*
8 *described in Section 2770In to the employer (or to a renewal of*
9 *that loan or, if the loan is repayable upon demand, to a*
10 *continuation of that loan) if the loan bears a reasonable rate of*
11 *interest, and if (in the case of a making or renewal) all of the*
12 *following apply:*

13 (1) *The employer is prohibited (at the time of that making or*
14 *renewal) by any law of the United States or regulation thereunder*
15 *from directly or indirectly pledging, as security for the loan, a*
16 *particular class or classes of his or her assets the value of which*
17 *(at that time) represents more than one-half of the value of all his*
18 *or her assets.*

19 (2) *The making or renewal, as the case may be, is approved in*
20 *writing as an investment that is consistent with the exempt purposes*
21 *of the trust by a trustee who is independent of the employer, and*
22 *no other independent trustee had previously refused to give that*
23 *written approval.*

24 (3) *Immediately following the making or renewal, as the case*
25 *may be, the aggregate amount loaned by the trust to the employer,*
26 *without the receipt of adequate security, does not exceed 25 percent*
27 *of the value of all the assets of the trust.*

28 (4) *For purposes of paragraph (2) the term “trustee” means,*
29 *with respect to any trust for which there is more than one trustee*
30 *who is independent of the employer, a majority of those*
31 *independent trustees. For purposes of paragraph (3), the*
32 *determination as to whether any amount loaned by the trust to the*
33 *employer is loaned without the receipt of adequate security shall*
34 *be made without regard to subdivision (b).*

35 27736.2. *An organization described in Section 2770Id that is*
36 *subject to this article, except any specified in Section 27736, shall*
37 *not be exempt from taxation under Article 1 of this chapter if it*
38 *has engaged in a prohibited transaction after January 1, 1951;*
39 *and an organization described in Section 2770In that is subject*
40 *to this article shall not be exempt from taxation under Article 1 if*

1 *it has engaged in a prohibited transaction after December 31,*
2 *1960.*

3 *27736.3. An organization described in Section 27701n or*
4 *Section 27701d, except as specified in Section 27736, shall be*
5 *denied exemption under Section 27736.2 only for taxable years*
6 *subsequent to the taxable years during which it is notified by the*
7 *Franchise Tax Board that it has engaged in a prohibited*
8 *transaction, unless such organization entered into the prohibited*
9 *transaction with the purpose of diverting corpus or income of the*
10 *organization from its exempt purposes, and the transaction*
11 *involved a substantial part of the corpus or income of the*
12 *organization.*

13 *27736.4. Any organization denied exemption under Section*
14 *27701d or Section 27701n by reason of the provisions of Section*
15 *27736.2 with respect to any taxable year following the taxable*
16 *year in which notice of denial of exemption was received, may,*
17 *under regulations prescribed by the Franchise Tax Board, file*
18 *claim for exemption, and if the Franchise Tax Board pursuant to*
19 *the regulations, is satisfied that the organizations will not*
20 *knowingly again engage in a prohibited transaction, the*
21 *organization shall be exempt with respect to taxable years*
22 *subsequent to the year in which the claim is filed.*

23 *27737. In the case of any organization described in Section*
24 *27701d to which this article is applicable, exemption under Article*
25 *1 (commencing with Section 27701) shall be denied for the taxable*
26 *year if the amounts accumulated out of income during the taxable*
27 *year or any prior taxable year and not actually paid out by the*
28 *end of the taxable year are either of the following:*

29 *(a) Are unreasonable in amount or duration in order to carry*
30 *out the charitable, educational, or other purpose or function*
31 *constituting the basis for such organization's exemption under*
32 *Section 27701d.*

33 *(b) Are used to a substantial degree for purposes or functions*
34 *other than those constituting the basis for such organization's*
35 *exemption under Section 27701d.*

36 *(c) Are invested in such a manner as to jeopardize the carrying*
37 *out of the charitable, educational, or other purpose or function*
38 *constituting the basis for such organization's exemption under*
39 *Section 27701d.*

1 27740. *Section 4911 of the Internal Revenue Code, relating to*
2 *tax on excess expenditures to influence legislation, shall apply,*
3 *except as otherwise provided.*

4 (a) *Section 4911(a)(1) of the Internal Revenue Code shall not*
5 *apply.*

6 (b) *Section 4911(f)(4)(A) of the Internal Revenue Code shall*
7 *include efforts to influence legislation with respect to acts, bills,*
8 *resolutions, or similar items by the Legislature.*

9 27741. *Notwithstanding any other provision in this part, in the*
10 *case of a church exempt from taxes imposed under this part*
11 *pursuant to Article 1 (commencing with Section 27701) of Chapter*
12 *4, any rental income received, directly or indirectly, from another*
13 *church exempt from taxes imposed under this part pursuant to*
14 *Article 1 (commencing with Section 27701) of Chapter 4 for rental*
15 *of exempt function church property is exempt from any tax imposed*
16 *by this part.*

17
18 Article 3. *Returns of Exempt Organizations*
19

20 27771. (a) *Except as provided in subdivision (b), every*
21 *organization, otherwise exempt under Article 1 (commencing with*
22 *Section 27701), but having receipts of the character described in*
23 *Article 2 (commencing with Section 27731), shall file a return,*
24 *verified by an executive officer under penalty of perjury in the*
25 *form prescribed by the Franchise Tax Board, on or before the 15th*
26 *day of the fifth month following the close of the taxable year,*
27 *reporting its net receipts from those activities and shall pay a tax*
28 *as required by Section 27731 on its unrelated business net receipts*
29 *as defined in Section 27732.*

30 (b) *An education IRA described in Section 27712 shall file a*
31 *return described in subdivision (a) on or before the 15th day of*
32 *the fourth month following the close of the taxable year.*

33 27772. (a) *For the purposes of this part:*

34 (1) *Except as provided in paragraph (2), every organization*
35 *exempt from taxation under Section 27701 and every trust treated*
36 *as a private foundation because of Section 4947(a)(1) of the*
37 *Internal Revenue Code shall file an annual return, stating*
38 *specifically the items of gross receipts and purchases, and any*
39 *other information for the purpose of carrying out the laws under*
40 *this part as the Franchise Tax Board may by rules or regulations*

1 *prescribe, and shall keep any records, render under oath any*
 2 *statements, make any other returns, and comply with any rules*
 3 *and regulations as the Franchise Tax Board may from time to time*
 4 *prescribe. The return shall be filed on or before the 15th day of*
 5 *the fifth full calendar month following the close of the taxable year.*

6 *(2) Exceptions from filing:*

7 *(A) Mandatory exceptions, paragraph (1) does not apply to:*

8 *(i) Churches, their integrated auxiliaries, and conventions or*
 9 *associations of churches.*

10 *(ii) Any organization (other than a private foundation as defined*
 11 *in Section 27709), the gross receipts of which in each taxable year*
 12 *are normally not more than five hundred thousand dollars*
 13 *(\$500,000).*

14 *(iii) The exclusively religious activities of any religious order.*

15 *(B) Discretionary exceptions:*

16 *(i) The Franchise Tax Board may permit the filing of a simplified*
 17 *return for organizations based on either gross receipts or total*
 18 *assets, or both gross receipts and total assets.*

19 *(ii) The Franchise Tax Board may permit the filing of an*
 20 *information statement (without fee).*

21 *(iii) The Franchise Tax Board may permit the filing of a group*
 22 *return for incorporated or unincorporated branches of a state or*
 23 *national organization where it determines that an information*
 24 *return is not necessary to the efficient administration of this part.*

25 *(3) An organization that is required to file an annual information*
 26 *return shall pay a filing fee of ten dollars (\$10) on or before the*
 27 *due date for filing the annual information return (determined with*
 28 *regard to any extension of time for filing the return) required by*
 29 *this section. In case of failure to pay the fee on or before the due*
 30 *date, unless it is shown that the failure is due to reasonable cause,*
 31 *the filing fee shall be twenty-five dollars (\$25). All collection*
 32 *remedies provided in Article 5 (commencing with Section 18661)*
 33 *of Chapter 2 of Part 10.2 are applicable to collection of the filing*
 34 *fee. However, the filing fee does not apply to the organization*
 35 *described in paragraph (4).*

36 *(4) Paragraph (3) shall not apply to:*

37 *(A) A religious organization exempt under Section 27701d.*

38 *(B) An educational organization exempt under Section 27701d,*
 39 *if that organization normally maintains a regular faculty and*
 40 *curriculum and normally has a regularly organized body of pupils*

1 *or students in attendance at the place where its educational*
2 *activities are regularly carried on.*

3 *(C) A charitable organization, or an organization for the*
4 *prevention of cruelty to children or animals, exempt under Section*
5 *27701d, if that organization is supported, in whole or in part, by*
6 *funds contributed by the United States or any state or political*
7 *subdivision thereof, or is primarily supported by contributions of*
8 *the general public.*

9 *(D) An organization exempt under Section 27701d, if that*
10 *organization is operated, supervised, or controlled by or in*
11 *connection with a religious organization described in*
12 *subparagraph (A).*

13 *(b) Every organization described in Section 27701d that is*
14 *subject to the requirements of subdivision (a) is required to furnish*
15 *annually information, at the time and in the manner as the*
16 *Franchise Tax Board may by rules or regulations prescribe, setting*
17 *forth all of the following:*

18 *(1) Its gross income for the year.*

19 *(2) Its expenses attributable to gross income and incurred*
20 *within the year.*

21 *(3) Its disbursements within the year for the purposes for which*
22 *it is exempt.*

23 *(4) A balance sheet showing its assets, liabilities, and net worth*
24 *as of the beginning of that year.*

25 *(5) The total of the contributions and gifts received by it during*
26 *the year, and the names and addresses of all substantial*
27 *contributors.*

28 *(6) The names and addresses of its foundation manager (within*
29 *the meaning of Section 4946 of the Internal Revenue Code) and*
30 *highly compensated employees.*

31 *(7) The compensation and other payments made during the year*
32 *to each individual described in paragraph (6).*

33 *(8) In the case of an organization with respect to which an*
34 *election under Section 27704.5 is effective for the taxable year,*
35 *the following amounts for that organization for that taxable year:*

36 *(A) The lobbying expenditures (as defined in Section 4911(c)(1)*
37 *of the Internal Revenue Code).*

38 *(B) The lobbying nontaxable amount (as defined in Section*
39 *4911(c)(2) of the Internal Revenue Code).*

1 (C) *The grassroots expenditures (as defined in Section*
2 *4911(c)(3) of the Internal Revenue Code).*

3 (D) *The grassroots nontaxable amount (as defined in Section*
4 *4911(c)(4) of the Internal Revenue Code). For purposes of this*
5 *paragraph, if Section 27740 applies to the organization for the*
6 *taxable year, the organization shall furnish the amounts with*
7 *respect to the affiliated group as well as with respect to the*
8 *organization.*

9 (9) *Other information with respect to direct or indirect transfers*
10 *to, and other direct or indirect transactions and relationships with,*
11 *other organizations described in Sections 27701a to 27701w,*
12 *inclusive (other than Sections 27701d, 27701k, and 27701t), as*
13 *the Franchise Tax Board may require to prevent either of the*
14 *following:*

15 (A) *Diversion of funds from the organization's exempt purpose.*

16 (B) *Misallocation of revenue or expense.*

17 (10) *Any other relevant information as the Franchise Tax Board*
18 *may prescribe.*

19 (c) *For the purposes of this part:*

20 (1) *In the case of a failure to file a return required under this*
21 *section on the date and in the manner prescribed therefor*
22 *(determined with regard to any extension of time for filing), unless*
23 *it is shown that the failure is due to reasonable cause, there shall*
24 *be paid (on notice and demand by the Franchise Tax Board and*
25 *in the same manner as tax) by the exempt organization or trust*
26 *failing so to file, five dollars (\$5) for each month or part thereof*
27 *during which the failure continues, but the total amount imposed*
28 *hereunder on any organization for failure to file any return may*
29 *not exceed forty dollars (\$40).*

30 (2) *The Franchise Tax Board may make written demand upon*
31 *a private foundation failing to file under paragraph (1) specifying*
32 *therein a reasonable future date by which the filing shall be made,*
33 *and if the filing is not made on or before that date, and unless it*
34 *is shown that failure so to file is due to reasonable cause, there*
35 *shall be paid (on notice and demand by the Franchise Tax Board*
36 *and in the same manner as tax) by the person failing so to file, in*
37 *addition to the penalty prescribed in paragraph (1), a penalty of*
38 *five dollars (\$5) each month or part thereof after the expiration*
39 *of the time specified in the written demand during which the failure*
40 *continues, but the total amount imposed hereunder on all persons*

1 *for the failure to file shall not exceed twenty-five dollars (\$25). If*
2 *more than one person is liable under this paragraph for a failure*
3 *to file, all of those persons shall be jointly and severally liable*
4 *with respect to the failure. The term “person” as used herein means*
5 *any officer, director, trustee, employee, member, or other*
6 *individual who is under a duty to perform the act in respect of*
7 *which the violation occurs.*

8 27774. (a) *Except as provided in subdivision (b), every*
9 *organization exempt from filing an annual information return by*
10 *reason of subdivision (a) of Section 27772, may be required to file*
11 *an annual statement on or before the 15th day of the fifth calendar*
12 *month following the close of the taxable year setting forth in the*
13 *manner as may be required by the Franchise Tax Board the*
14 *following information: the name and address of the organization,*
15 *its major activities, its sources of gross receipts, and the section*
16 *of the Internal Revenue Code under which it is exempt.*
17 *Organizations other than those described in clauses (i) and (iii)*
18 *of subparagraph (A) of paragraph (2) of subdivision (a) of Section*
19 *23772 may also be required by the Franchise Tax Board to furnish*
20 *information with respect to their gross receipts and their assets.*

21 (b) *Every religious organization exempt from filing an annual*
22 *information return by reason of subdivision (a) of Section 27772,*
23 *that because of sincerely held religious convictions refuses to file*
24 *an annual statement as prescribed in subdivision (a), may submit*
25 *in lieu thereof a notarized statement on its organizational*
26 *letterhead containing the following information: the name and*
27 *address of the organization, its major activities, its sources of*
28 *gross receipts, and the section of the Internal Revenue Code under*
29 *which it is exempt. That information shall be for the sole purpose*
30 *of verifying the absence of unrelated business net receipts of the*
31 *organization. The statement shall be submitted on or before the*
32 *15th day of the fifth calendar month following the close of the*
33 *taxable year.*

34 27775. *Except for purposes of amending the articles of*
35 *incorporation or organization to set forth a new name, under*
36 *regulations prescribed by the Franchise Tax Board, the powers,*
37 *rights, and privileges of an exempt domestic limited liability*
38 *business entity may be suspended and the exercise of the powers,*
39 *rights, and privileges of a foreign exempt limited liability entity*
40 *in this state may be forfeited if the organization fails to file the*

1 *annual return or statement required under Section 27772 or 27774,*
2 *or pay any amount due under Section 27703 or 27772 on or before*
3 *the last day of the 12th month following the close of the taxable*
4 *year.*

5 *27776. (a) Any organization that has suffered the suspension*
6 *or forfeiture provided for in Section 27775 may, in accordance*
7 *with Section 27198a, be relieved therefrom upon the filing of all*
8 *of the following:*

9 *(1) An application for revivor.*

10 *(2) When required by the Franchise Tax Board, a new*
11 *application for exemption under Section 27701.*

12 *(3) Any returns, statements, notifications, or amounts due under*
13 *Section 27772, 27774, or 27775 that were not previously submitted*
14 *or paid and which resulted in the suspension or forfeiture.*

15 *(4) An information return or statement and the amounts specified*
16 *under Section 27772 for each year, or part thereof, during the*
17 *period of suspension or forfeiture in which the organization*
18 *conducted any activities or received income, grants, gifts, or any*
19 *other asset.*

20 *(b) Any organization exempt from tax under Section 27701*
21 *which has suffered the suspension or forfeiture provided for in*
22 *Section 27191 or 27192 may be required by the Franchise Tax*
23 *Board to file a new application for exemption in connection with*
24 *an application for revivor under Section 27198.*

25 *27777. The exemption granted to any organization under*
26 *Article 1 (commencing with Section 27701) may be revoked by the*
27 *Franchise Tax Board if the organization fails to do any of the*
28 *following:*

29 *(a) File any return required under this chapter or pay any*
30 *amount due under this part or Part 10.2 (commencing with Section*
31 *18401) on or before the last day of the 12th month following the*
32 *close of the taxable year.*

33 *(b) Comply with Section 19504 (relating to powers of the*
34 *Franchise Tax Board to examine records and subpoena witnesses).*

35 *(c) Confine its activities to those permitted by the section under*
36 *which the exemption was granted.*

37 *27778. An organization whose exemption was revoked under*
38 *Section 27777 may be reestablished as an exempt organization*
39 *upon:*

40 *(a) The filing or payment of:*

1 (1) A new application for exemption and payment of the filing
2 fee required under Section 27701.

3 (2) Any returns, statements, or payments of any amounts due
4 under this part or Part 10.2 (commencing with Section 18401)
5 that were not previously submitted or paid and which resulted in
6 the revocation.

7 (b) When revocation occurred under subdivision (c) of Section
8 27777, satisfactory proof that:

9 (1) The organization has corrected its nonexempt activities.

10 (2) That it will operate in an exempt manner in the future.

11 (3) The payment of any tax for periods the organization was
12 not qualified for exemption.

13 27779. For purposes of this chapter, any reference to the
14 Internal Revenue Code or a provision thereof, means the Internal
15 Revenue Code or provision thereof, as in effect January 1, 2009.

16 27780. Any reference to Chapter 4 (commencing with Section
17 23701) of Part 11 (commencing with Section 23001) or any
18 provision thereof shall also be a reference to this article or a
19 provision of this chapter that is substantially the same as the
20 provision referenced in Chapter 4 (commencing with Section
21 23701) of Part 11 (commencing with Section 23001).

22 CHAPTER 5. CREDITS

23 Article 1. Small Business Credit

24
25
26
27 27801. (a) For each taxable year beginning on or after
28 January 1, 2013, there shall be allowed as a credit against the tax
29 imposed under Article 2 (commencing with Section 27151) of
30 Chapter 2 the amount determined under paragraph (1) or
31 paragraph (2) subdivision (b).

32 (b) (1) If net receipts exceed purchases, the credit shall be equal
33 to an amount determined as follows:

34 (A) Multiply twenty thousand dollars (\$20,000) by a fraction,
35 the numerator of which is net receipts and the denominator of
36 which is gross receipts.

37 (B) Multiply the amount by which gross receipts exceeds five
38 hundred thousand dollars (\$500,000) by 0.008.

39 (C) The amount of the credit allowed under this paragraph
40 equals the amount by which the amount determined under

1 *subparagraph (A) exceeds the amount determined in subparagraph*
2 *(B).*

3 *(2) If purchases equal or exceed net receipts, the credit shall*
4 *be equal to an amount determined as follows:*

5 *(A) One less a fraction, the numerator of which is purchases*
6 *and the denominator of which is gross receipts, carried out to*
7 *_____ decimal places.*

8 *(B) Two hundred fifty thousand dollars (\$250,000) divided by*
9 *the number determined under subparagraph (A).*

10 *(C) Multiply the amount by which gross receipts exceeds the*
11 *amount determined in subparagraph (B) by 0.008.*

12 *(D) The amount of the credit under this paragraph equals ten*
13 *thousand dollars (\$10,000), reduced by the amount determined in*
14 *subparagraph (C).*

15
16 *Article 2. Research and Development Credit*
17

18 *27811. For each taxable year beginning on or after January*
19 *1, 2013, there shall be allowed as a credit against the tax imposed*
20 *under Article 2 (commencing with Section 27151) of Chapter 2 an*
21 *amount determined in accordance with Section 41 of the Internal*
22 *Revenue Code, relating to credit for increasing research activities,*
23 *except as follows:*

24 *(a) The reference to “20 percent” in Section 41(a)(1) of the*
25 *Internal Revenue Code is modified to read “_____ percent.”*

26 *(b) The reference to “20 percent” in Section 41(a)(2) of the*
27 *Internal Revenue Code is modified to read “_____ percent.”*

28 *(c) (1) With respect to any expense paid or incurred after the*
29 *operative date of Section 6378, Section 41(b)(1) of the Internal*
30 *Revenue Code is modified to exclude from the definition of*
31 *“qualified research expense” any amount paid or incurred for*
32 *tangible personal property that is eligible for the exemption from*
33 *sales or use tax provided by Section 6378.*

34 *(2) “Qualified research” and “basic research” shall include*
35 *only research conducted in California.*

36 *(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue*
37 *Code, shall be modified so that “basic research,” for purposes of*
38 *this section, includes any basic or applied research including*
39 *scientific inquiry or original investigation for the advancement of*
40 *scientific or engineering knowledge or the improved effectiveness*

1 of commercial products, except that the term does not include any
2 of the following:

3 (1) Basic research conducted outside California.

4 (2) Basic research in the social sciences, arts, or humanities.

5 (3) Basic research for the purpose of improving a commercial
6 product if the improvements relate to style, taste, cosmetic, or
7 seasonal design factors.

8 (4) Any expenditure paid or incurred for the purpose of
9 ascertaining the existence, location, extent, or quality of any
10 deposit of ore or other mineral (including oil and gas).

11 (e) (1) In the case of a taxpayer engaged in any
12 biopharmaceutical research activities that are described in codes
13 2833 to 2836, inclusive, or any research activities that are
14 described in codes 3826, 3829, or 3841 to 3845, inclusive, of the
15 Standard Industrial Classification (SIC) Manual published by the
16 United States Office of Management and Budget, 1987 edition, or
17 any other biotechnology research and development activities, the
18 provisions of Section 41(e)(6) of the Internal Revenue Code shall
19 be modified to include both of the following:

20 (A) A qualified organization as described in Section
21 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
22 institution of higher education as described in Section 3304(f) of
23 the Internal Revenue Code.

24 (B) A charitable research hospital owned by an organization
25 that is described in Section 501(c)(3) of the Internal Revenue Code,
26 is exempt from taxation under Section 501(a) of the Internal
27 Revenue Code, is not a private foundation, is designated a
28 “specialized laboratory cancer center,” and has received Clinical
29 Cancer Research Center status from the National Cancer Institute.

30 (2) For purposes of this subdivision:

31 (A) “Biopharmaceutical research activities” means those
32 activities that use organisms or materials derived from organisms,
33 and their cellular, subcellular, or molecular components, in order
34 to provide pharmaceutical products for human or animal
35 therapeutics and diagnostics. Biopharmaceutical activities make
36 use of living organisms to make commercial products, as opposed
37 to pharmaceutical activities that make use of chemical compounds
38 to produce commercial products.

39 (B) “Other biotechnology research and development activities”
40 means research and development activities consisting of the

1 application of recombinant DNA technology to produce
2 commercial products, as well as research and development
3 activities regarding pharmaceutical delivery systems designed to
4 provide a measure of control over the rate, duration, and site of
5 pharmaceutical delivery.

6 (f) In the case where the credit allowed by this section exceeds
7 the “tax,” the excess may be carried over to reduce the “tax” in
8 the following year, and succeeding years if necessary, until the
9 credit has been exhausted.

10 (g) The reference to “Section 501(a)” in Section 41(b)(3)(C)
11 of the Internal Revenue Code, relating to contract research
12 expenses, is modified to read “this part or Part 10 (commencing
13 with Section 17001).”

14 (h) (1) (A) The reference to “2.65 percent” in Section
15 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read
16 “one and forty-nine hundredths of one percent.”

17 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
18 the Internal Revenue Code is modified to read “one and
19 ninety-eight hundredths of one percent.”

20 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
21 of the Internal Revenue Code is modified to read “two and
22 forty-eight hundredths of one percent.”

23 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
24 election under Section 41(c)(4)(A) of the Internal Revenue Code
25 may be made. That election shall apply to the taxable year for
26 which made and all succeeding taxable years unless revoked with
27 the consent of the Franchise Tax Board.

28 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
29 gross receipts, is modified to take into account only those gross
30 receipts from the sale of property held primarily for sale to
31 customers in the ordinary course of the taxpayer’s trade or
32 business that is delivered or shipped to a purchaser within this
33 state, regardless of f.o.b. point or any other condition of the sale.

34 (i) Section 41(h) of the Internal Revenue Code, relating to
35 termination, shall not apply.

36 (j) Section 41(g) of the Internal Revenue Code, relating to
37 special rule for passthrough of credit, is modified by each of the
38 following:

39 (1) The last sentence shall not apply.

1 (2) *If the amount determined under Section 41(a) of the Internal*
2 *Revenue Code for any taxable year exceeds the limitation of Section*
3 *41(g) of the Internal Revenue Code, that amount may be carried*
4 *over to other taxable years under the rules of subdivision (f), except*
5 *that the limitation of Section 41(g) of the Internal Revenue Code*
6 *shall be taken into account in each subsequent taxable year.*

7 (k) *For purposes of this section, references to the Internal*
8 *Revenue Code mean the Internal Revenue Code, as in effect*
9 *January 1, 2009.*

10
11 *CHAPTER 6. ACCOUNTING RULES*
12

13 *Article 1. Foreign Governments and International*
14 *Organizations*
15

16 27901. (a) *Section 892 of the Internal Revenue Code, relating*
17 *to income of foreign governments and of international*
18 *organizations, shall apply.*

19 (b) *In applying Section 892 of the Internal Revenue Code for*
20 *purposes of this part, “gross receipts” and “net receipts” shall*
21 *be substituted for “income” wherever appropriate.*
22

23 *Article 2. Cooperatives*
24

25 27904. *In the case of farmers, fruit growers, or like associations*
26 *organized and operated in whole or in part on a cooperative or*
27 *mutual basis, (a) for the purpose of marketing the products of*
28 *members or other producers, and turning back to them the*
29 *proceeds of sales, less the necessary marketing expenses, which*
30 *may include reasonable reserves, on the basis of either the quantity*
31 *or the value of the products furnished by them, or (b) for the*
32 *purpose of purchasing, or producing, supplies and equipment for*
33 *the use of members or other persons, and turning over such*
34 *supplies and equipment to them at actual cost, plus necessary*
35 *expenses, all net receipts resulting from or arising out of such*
36 *business activities for or with their members carried on by them*
37 *or their agents; or when done on a nonprofit basis for or with*
38 *nonmembers. For the purposes of this section “all net receipts*
39 *resulting from or arising out of such business activities for or with*
40 *their members” shall include all amounts, whether or not derived*

1 from patronage, allocated to members during the taxable year.
 2 Amounts allocated include cash, merchandise, capital stock,
 3 revolving fund certificates, certificates of indebtedness, retain
 4 certificates, letters of advice, or written instruments which in some
 5 other manner disclose to each member the dollar amount allocated
 6 to him. Allocations made after the close of the taxable year and
 7 on or before the fifteenth day of the ninth month following the close
 8 of such year shall be considered as made on the last day of such
 9 taxable year to the extent the allocations are attributable to net
 10 receipts derived before the close of such year.

11 27905. (a) In the case of other associations organized and
 12 operated in whole or in part on a cooperative or a mutual basis,
 13 all net receipts resulting from or arising out of business activities
 14 for or with their members carried on by them or their agents, or
 15 when done on a nonprofit basis for or with nonmembers, shall be
 16 an allowable deduction. However, the deduction allowable under
 17 this section shall not apply to those cooperative or mutual
 18 associations whose net receipts is principally derived from the
 19 sale in the regular course of business of tangible personal property
 20 other than water, agricultural products, or food sold at wholesale.

21 (b) For the purposes of subdivision (a), "food sold at wholesale"
 22 means a sale of food to anyone engaged in the business of selling
 23 food who holds a seller's permit issued pursuant to Section 6066,
 24 and who at the time of purchasing the food either:

- 25 (1) Intends to sell it in the regular course of business.
- 26 (2) Is unable to ascertain at the time of purchase whether the
 27 food will be sold or used for some other purpose.

28 (c) For the purposes of subdivision (a), a credit union's activities
 29 are "for or with" the members of the credit union if the activities
 30 involve the investment of surplus member savings capital in
 31 investments permitted for credit unions pursuant to Sections 14406,
 32 14652, 14653, 14653.5, 14654, 14655, and 14656 of the Financial
 33 Code. "Surplus member savings capital" means the savings capital
 34 of credit union members which is in excess of the amount of savings
 35 capital which is loaned to members of the credit union. The term
 36 "savings capital" shall have the meaning set forth in subdivision
 37 (a) of Section 14400 of the Financial Code.

38 (d) For purposes of subdivision (a), "net receipts resulting from
 39 or arising out of business activities for or with their members"

1 includes, but is not limited to, all net receipts resulting from
2 reciprocal transactions with member credit unions.

3 27906. In the case of other associations organized and operated
4 as cooperative corporations pursuant to Part 2 (commencing with
5 Section 12200) of Division 3 of Title 1 of the Corporations Code,
6 whose net receipts are principally derived from the sale in the
7 regular course of business of tangible personal property other
8 than water, agricultural products, or food sold at wholesale, all
9 patronage refunds paid or accrued to patrons if the patronage
10 refunds are made and allocated as follows:

11 (a) Made pursuant to a preexisting obligation which is created
12 by the association's bylaws or other written instrument.

13 (b) Made from earnings which are attributable to business done
14 by the association with the patrons to whom the patronage refunds
15 are made, and allocated ratably according to patronage.

16 (c) Allocated, and the patrons to whom the patronage refunds
17 are to be made are notified of the allocation, on or before the due
18 date for the filing of the association's franchise tax return,
19 including any extension of time, pursuant to this part, for the year
20 in which the patronage occurred.

21 27906.5. (a) In the case of gas producers' cooperative
22 associations organized and operated as cooperative corporations
23 pursuant to Chapter 1 (commencing with Section 3001) of Part 4
24 of Division 1 of the Public Utilities Code, whose net receipts are
25 principally derived from the sale in the regular course of business
26 of tangible personal property other than water, agricultural
27 products or food sold at wholesale, all patronage refunds paid or
28 accrued to patrons if the patronage refunds are made and allocated
29 as follows:

30 (1) Made pursuant to a preexisting obligation which is created
31 by the association's bylaws or other written instrument.

32 (2) Made from earnings that are attributable to business done
33 by the association with the patrons to whom the patronage refunds
34 are made, and allocated ratably according to patronage.

35 (3) Allocated, and the patrons to whom the patronage refunds
36 are to be made are notified of the allocation, on or before the due
37 date for the filing of the association's franchise tax return,
38 including any extension of time, pursuant to this part, for the year
39 in which the patronage occurred.

(b) Each cooperative corporation shall certify to the Franchise Tax Board its eligibility for the deduction provided by this section. Certification shall be made at the time and in the manner prescribed by the Franchise Tax Board in forms or instructions.

27906.6. For purposes of Sections 27904 to 27906.5, inclusive, net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation, bylaws of the organization, or other contract with patrons provide that those dividends are in addition to amounts otherwise payable to patrons that are derived from business done for or with patrons during the taxable year.

Article 3. Certain Provisions of the Internal Revenue Code

27911. Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to corporate distributions and adjustments, shall apply, except as otherwise provided.

27912. (a) (1) If, in connection with any exchange described in Section 332, 351, 354, 356, or 361 of the Internal Revenue Code, a taxpayer transfers property to an insurer, the insurer shall not, for purposes of determining the extent to which gain shall be recognized on that transfer, be considered to be a corporation for purposes of this part.

(2) Paragraph (1) shall not apply to any of the following types of transactions, unless that transaction has the effect (directly or indirectly) of transferring appreciated property from a taxpayer subject to tax under this part (or a member of the taxpayer's combined reporting group) to an insurer:

(A) An exchange or transfer pursuant to Section 368(a)(2)(D) or Section 368(a)(2)(E) of the Internal Revenue Code.

(B) A transfer of stock in an 80 percent-owned insurer for the purpose of filing a consolidated tax return or for financial or regulatory reporting.

(C) A transfer or exchange of publicly owned stock of the parent corporation.

(3) If a transaction described in paragraph (2) would qualify under that paragraph but for the fact that the transaction has the effect (directly or indirectly) of transferring appreciated property from a taxpayer subject to tax under this part (or a member of the

1 taxpayer's combined reporting group) to an insurer, then, if the
2 property is used in the active trade or business of the insurer,
3 subdivision (b) shall be deemed to apply to that transfer.

4 (4) For purposes of this subdivision, "appreciated property"
5 means property whose fair market value, as of the date of the
6 transfer subject to this section, exceeds its adjusted basis as of
7 that date.

8 (b) (1) Except as provided in subdivision (c), or as otherwise
9 provided by regulations prescribed by the Franchise Tax Board,
10 if property subject to paragraph (1) of subdivision (a) or to
11 subdivision (g) is transferred to an insurer for use in the active
12 conduct of a trade or business of the insurer, then any gain
13 otherwise required to be recognized under that subdivision shall
14 be deferred until the date that the property is no longer owned by
15 an insurer in the taxpayer's commonly controlled group (or a
16 member of the taxpayer's combined reporting group), or the
17 property is no longer used in the active conduct of the insurer's
18 trade or business (or the trade or business of another member in
19 the taxpayer's combined reporting group), or the holder of the
20 property is no longer held by an insurer in the commonly controlled
21 group of the transferor (or a member of the taxpayer's combined
22 reporting group).

23 (2) Any of the events described in paragraph (1) shall be treated
24 as a disposition of the property under this subdivision, irrespective
25 of whether any other provision in this part or in the Internal
26 Revenue Code would otherwise permit nonrecognition treatment
27 of the transaction described in this subdivision.

28 (3) Notwithstanding paragraph (2), an insurer that becomes a
29 member of the taxpayer's commonly controlled group or a
30 corporation that becomes a member of the taxpayer's combined
31 reporting group, as a result of a transaction of which a transfer
32 referred to in this subdivision is a part, shall be treated as a
33 member of the taxpayer's commonly controlled group or a member
34 of the taxpayer's combined reporting group at the time of the
35 transfer for purposes of this subdivision.

36 (4) For purposes of this subdivision, stock of an insurance
37 subsidiary constitutes property used in the active trade or business
38 of the insurer.

39 (5) If the deferred gain required to be taken into account under
40 this subdivision is business income (as defined by subdivision (a)

1 of Section 28120), the gain shall be apportioned using the
2 apportionment percentage for the taxable year that the gain is
3 required to be taken into account under this subdivision. Except
4 as provided in regulations under Section 28137, for purposes of
5 the sales factor for that taxable year, the transaction giving rise
6 to that gain shall be treated as a sale occurring in the taxable year
7 the gain is taken into account. The amount of any gain required
8 to be recognized under this subdivision upon any disposition
9 described in this subdivision shall not exceed the lesser of the
10 deferred gain or the gain realized in the transaction in which gain
11 is required to be recognized under this subdivision.

12 (6) For purposes of computing the amount of gain required to
13 be recognized under this subdivision, appropriate adjustments
14 may be made, pursuant to regulations issued by the Franchise Tax
15 Board, to the basis of stock to reflect the disallowance of any
16 expenses under this part.

17 (c) The Franchise Tax Board may prescribe regulations
18 providing for an annual reporting requirement in the form of a
19 statement or other form, to be attached to the transferor taxpayer's
20 return, regarding the current ownership of any property for which
21 any gains were previously deferred pursuant to subdivision (b). If
22 the transferor taxpayer fails to provide any information required
23 by the Franchise Tax Board pursuant to the preceding sentence,
24 the Franchise Tax Board may, in lieu of the year described by
25 subdivision (b), require that the transferor taxpayer take those
26 gains into account in the first taxable year in which the current
27 ownership of the property is not reported. The preceding sentence
28 shall not apply so long as the property is still owned by the
29 transferee and the failure to provide the information was due to
30 reasonable cause and not willful neglect. Notwithstanding any
31 other law, if a taxpayer fails to satisfy the reporting requirements
32 of this subdivision, then a notice of proposed deficiency assessment
33 resulting from adjustments attributable to gains previously deferred
34 pursuant to subdivision (b) with respect to which the reporting
35 requirements were not satisfied may be mailed to the taxpayer
36 within four years from the date on which the reporting
37 requirements are satisfied by the taxpayer.

38 (d) Subdivision (b) shall not apply to any property described
39 by Section 367(a)(3)(B) of the Internal Revenue Code.

1 (e) Except as provided by regulations prescribed by the
2 Franchise Tax Board, a transfer by a taxpayer of an interest in a
3 partnership to an insurer in a transaction described in subdivision
4 (a) shall be treated as a transfer to that insurer of the taxpayer's
5 pro rata share of the assets of the partnership.

6 (f) For purposes of this section, any distribution described by
7 Section 355 of the Internal Revenue Code (or so much of Section
8 356 of the Internal Revenue Code as it relates to Section 355 of
9 the Internal Revenue Code) shall be treated as an exchange under
10 this section, whether or not the distribution is an exchange. This
11 subdivision shall not apply to any distribution in which either of
12 the following applies:

13 (1) The distributing corporation is an insurer.

14 (2) The distributee is a person other than an insurer.

15 (g) For purposes of this part, any transfer of property to an
16 insurer as a contribution to capital of that insurer by one or more
17 persons who, immediately after the transfer, own (within the
18 meaning of Section 318 of the Internal Revenue Code) stock
19 possessing at least 80 percent of the total combined voting power
20 of all classes of stock of that insurer that are entitled to vote shall
21 be treated as an exchange of that property for stock of the insurer
22 equal in value to the fair market value of the property transferred.

23 (h) (1) In the case of any distribution described in Section 355
24 of the Internal Revenue Code (or so much of Section 356 of the
25 Internal Revenue Code as it relates to Section 355 of the Internal
26 Revenue Code) by a taxpayer to an insurer, to the extent provided
27 in regulations prescribed by the Franchise Tax Board, gain shall
28 be recognized under principles similar to the principles of this
29 section.

30 (2) In the case of any liquidation to which Section 332 of the
31 Internal Revenue Code applies, except as provided in regulations
32 prescribed by the Franchise Tax Board, both of the following shall
33 apply:

34 (A) Sections 337(a) and 337(b)(1) of the Internal Revenue Code
35 shall not apply, where the 80 percent distributee is an insurer.

36 (B) Where the distributor is an insurer, the distributee shall
37 treat the distribution as a distribution from the insurer's earnings
38 and profits, to the extent thereof.

1 (3) *For purposes of the preceding paragraph, the deemed*
2 *distribution from earnings and profits shall be treated as if actually*
3 *distributed as a dividend.*

4 (i) *For purposes of this section, the following definitions shall*
5 *apply:*

6 (1) *An insurer is any insurer within the meaning of Section 28*
7 *of Article XIII of the California Constitution, whether or not the*
8 *insurer is engaged in business in California.*

9 (2) *The phrase “commonly controlled group” shall have the*
10 *same meaning as that phrase has under Section 28105.*

11 (3) *The phrase “combined reporting group” means those*
12 *corporations whose income is required to be included in the same*
13 *combined report pursuant to Section 28101 or 28110.*

14 (j) *The Franchise Tax Board may prescribe any regulations*
15 *that may be appropriate to carry out the purpose of this section,*
16 *which purpose is to prevent the removal of gain inherent in*
17 *property at the time of a transfer from taxation under this part.*
18 *Those regulations may provide for appropriate adjustments to the*
19 *amount of deferred income described in subdivision (b) to avoid*
20 *the double inclusion of income for situations, including but not*
21 *limited to, the property transferred to an insurer member of the*
22 *commonly controlled group is later acquired by a noninsurer*
23 *member of the taxpayer’s combined reporting group.*

24 (k) *Upon an adequate showing by a taxpayer that a transaction*
25 *referred to in subdivision (a) or (h) would not violate the purposes*
26 *of this section to prevent the removal of gain inherent in property*
27 *at the time of a transfer from taxation under this part, the*
28 *Franchise Tax Board may grant relief from the application of this*
29 *section. In an appeal filed with the State Board of Equalization,*
30 *or an action filed under Section 19382 or 19385, the State Board*
31 *of Equalization or the court, as the case may be, shall have*
32 *jurisdiction to grant that relief only upon a specific finding that*
33 *the transfer did not remove gain inherent in property at the time*
34 *of transfer from taxation under this part.*

35 (l) *This section applies to transactions entered into on or after*
36 *January 1 through June 23, 2004, or transactions entered into*
37 *after June 23, 2004, pursuant to a binding written contract in*
38 *existence on June 23, 2004. For purposes of this subdivision,*
39 *transactions entered into on or after June 23, 2004, that were given*
40 *final approval by a regulatory insurance commissioner before*

1 June 23, 2004, shall be considered a transaction entered into
2 before June 23, 2004, pursuant to a binding written contract in
3 existence on June 23, 2004.

4 27913. Section 381(c) of the Internal Revenue Code, relating
5 to items of the distributor or transferor corporation, is modified
6 to provide that, in lieu of paragraph (24), relating to credit under
7 Section 38, and paragraph (25), relating to credit under Section
8 53, the acquiring corporation shall take into account (to the extent
9 proper to carry out the purposes of Section 381 of the Internal
10 Revenue Code) the items required to be taken into account for
11 purposes of each credit allowable under this part with respect to
12 the distributor or transferor corporation.

13 27914. Section 383 of the Internal Revenue Code, relating to
14 special limitations on certain excess credits, etc., is modified to
15 apply to credits allowable under Chapter 5 (commencing with
16 Section 27801).

17
18 Article 4. Accounting Periods and Methods of Accounting
19

20 27921. (a) Receipts shall be computed on the basis of the
21 taxpayer's taxable year.

22 (b) For purposes of this part, the term "taxable year" means
23 any of the following:

24 (1) The taxpayer's annual accounting period, if it is a calendar
25 year or a fiscal year.

26 (2) The calendar year, if subdivision (g) applies.

27 (3) The period for which the return is made, if a return is made
28 for a period of less than 12 months.

29 (c) For purposes of this part, the term "annual accounting
30 period" means the annual period on the basis of which the taxpayer
31 regularly computes its receipts in keeping its books.

32 (d) For purposes of this part, the term "calendar year" means
33 a period of 12 months ending on December 31.

34 (e) For purposes of this part, the term "fiscal year" means a
35 period of 12 months ending on the last day of any month other
36 than December. In the case of any taxpayer who has made the
37 election provided by subdivision (f), the term means the annual
38 period (varying from 52 to 53 weeks) so elected.

39 (f) (1) A taxpayer who, in keeping its books, regularly computes
40 its receipts on the basis of an annual period which varies from 52

1 to 53 weeks and ends always on the same day of the week and ends
2 always:

3 (A) On whatever date such same day of the week last occurs in
4 a calendar month.

5 (B) On whatever date such same day of the week falls which is
6 nearest to the last day of a calendar month, may (in accordance
7 with the regulations prescribed under paragraph (3)) elect to
8 compute its receipts for purposes of this part on the basis of such
9 annual period.

10 (2) (A) In any case in which the effective date or the
11 applicability of any provision of this part is expressed in terms of
12 taxable years beginning or ending with reference to a specified
13 date which is the first or last day of a month, a taxable year
14 described in paragraph (1) shall be treated as either of the
15 following:

16 (i) As beginning with the first day of the calendar month
17 beginning nearest to the first day of such taxable year.

18 (ii) As ending with the last day of the calendar month ending
19 nearest to the last day of such taxable year, as the case may be.

20 (B) In the case of a change from or to a taxable year described
21 in paragraph (1):

22 (i) If such change results in a short period (within the meaning
23 of Section 27924) of 359 days or more, or less than seven days,
24 Section 27926 shall not apply.

25 (ii) If such change results in a short period of less than seven
26 days, such short period shall, for purposes of this part, be added
27 to and deemed a part of the following taxable year.

28 (iii) If such change results in a short period to which Section
29 24634 applies, the income for such short period shall be placed
30 on an annual basis for purposes of such subsection by multiplying
31 such income by 365 and dividing the result by the number of days
32 in a short period, and the tax shall be the same part of the tax
33 computed on the annual basis as the number of days in the short
34 period is of 365 days.

35 (3) The Franchise Tax Board shall prescribe those regulations
36 as it deems necessary for the application of this subsection.

37 (g) Except as provided in Section 27924 (relating to returns for
38 periods of less than 12 months), the taxpayer's taxable year shall
39 be the calendar year if any of the following applies:

40 (1) The taxpayer keeps no books.

1 (2) *The taxpayer does not have an annual accounting period.*

2 (3) *The taxpayer has an annual accounting period, but such*
3 *period does not qualify as a fiscal year.*

4 27922. *The taxable year of a taxpayer may not be different*
5 *than the taxable year used for purposes of the Internal Revenue*
6 *Code, unless initiated or approved by the Franchise Tax Board,*
7 *or otherwise required under Section 27924.*

8 27923. *If a taxpayer changes its annual accounting period, the*
9 *new accounting period shall become the taxpayer's taxable year*
10 *only if the change is approved by the Franchise Tax Board. For*
11 *purposes of this part, if a taxpayer to whom subdivision (g) of*
12 *Section 27921 applies adopts an annual accounting period (as*
13 *defined in subdivision (c) of Section 27921) other than a calendar*
14 *year, the taxpayer shall be treated as having changed its annual*
15 *accounting period.*

16 27924. (a) *A return for a period of less than 12 months*
17 *(referred to in this article as "short period") shall be made under*
18 *any of the following circumstances:*

19 (1) *When the taxpayer, with the approval of the Franchise Tax*
20 *Board, changes its annual accounting period. In such a case, the*
21 *return shall be made for the short period beginning on the day*
22 *after the close of the former taxable year and ending at the close*
23 *of the day before the day designated as the first day of the new*
24 *taxable year.*

25 (2) *When the taxpayer is in existence during only part of what*
26 *would otherwise be its taxable year, except if the taxpayer's*
27 *existence terminates as a result of a reorganization described in*
28 *Section 368(a)(1)(F) of the Internal Revenue Code.*

29 (3) *When the Franchise Tax Board terminates the taxpayer's*
30 *taxable year under Sections 19081 and 19082 (relating to tax in*
31 *jeopardy).*

32 (4) *When the taxpayer is required to make a federal return for*
33 *a period of less than 12 months.*

34 (b) *This section shall apply whether or not a federal return is*
35 *required to be filed for a period of less than 12 months.*

36 (c) *If a return is required to be filed under this section for a*
37 *period of less than 12 months, that period shall be deemed to be*
38 *a taxable year.*

39 27926. (a) *If a separate return is made by a taxpayer under*
40 *Section 27924 on account of a change in the accounting period,*

1 the net receipts computed on the basis of the period for which the
2 separate return is made, referred to in this section as “the short
3 period,” shall be placed on an annual basis by multiplying the
4 amount thereof by 12, and dividing by the number of months in
5 the short period. The Franchise Tax Board shall compute the
6 amount of a tax on the receipts placed on such annual basis. The
7 tax due under this section shall be such part of the tax computed
8 on such annual basis as the number of months in the short period
9 is of 12 months.

10 (b) If a taxpayer subject to the tax imposed by Chapter 2
11 establishes the amount of its net receipts for the period of 12
12 months beginning with the first day of the short period, computed
13 as if such 12-month period were a taxable year, under the law
14 applicable to such year, then the tax for the short period shall be
15 reduced to an amount which is such part of the tax computed on
16 the net receipts for such 12-month period as the net receipts
17 computed on the basis of the short period is of the net receipts for
18 the 12-month period. The taxpayer (other than a taxpayer to which
19 the next sentence applies) shall compute the tax and file its return
20 without the application of this section. If the taxpayer has disposed
21 of substantially all its assets prior to the end of such 12-month
22 period, then in lieu of the net receipts for such 12-month period
23 there shall be used for the purposes of this section the net receipts
24 for the 12-month period ending with the last day of the short
25 period. The tax computed under this section shall in no case be
26 less than the tax computed on the net receipts for the short period
27 without placing such receipts on an annual basis. The benefits of
28 this section shall not be allowed unless the taxpayer, at such time
29 as regulations prescribed hereunder require (but not after the time
30 prescribed for the filing of the return for the first taxable year
31 which ends on or after 12 months after the beginning of the short
32 period), makes application therefor in accordance with such
33 regulations. Such application, in case the return was filed without
34 regard to this section, shall be considered a claim for credit or
35 refund with respect to the amount by which the tax is reduced
36 under this section. The Franchise Tax Board shall prescribe such
37 regulations as it may deem necessary for the application of this
38 section.

39 27927. Section 444 of the Internal Revenue Code, relating to
40 election of taxable year other than required taxable year, shall be

1 applicable, except that Section 444(c)(1), relating to effect of
2 election, shall not apply.

3
4 Article 5. Methods of Accounting

5
6 27931. (a) Receipts shall be computed under the method of
7 accounting on the basis of which the taxpayer regularly computes
8 its receipts in keeping its books.

9 (b) If no method of accounting has been regularly used by the
10 taxpayer, or if the method used does not clearly reflect receipts,
11 the computation of receipts shall be made under such method as,
12 in the opinion of the Franchise Tax Board, does clearly reflect
13 receipts.

14 (c) Subject to subdivisions (a) and (b) and Section 27974, a
15 taxpayer may compute receipts under any of the following methods
16 of accounting:

17 (1) The cash receipts and disbursements method.

18 (2) An accrual method.

19 (3) Any other method permitted by this part.

20 (4) Any combination of the foregoing methods permitted under
21 regulations prescribed by the Franchise Tax Board.

22 (d) A taxpayer engaged in more than one trade or business may,
23 in computing receipts, use a different method of accounting for
24 each trade or business.

25 (e) Except as otherwise expressly provided in this part, a
26 taxpayer who changes the method of accounting on the basis of
27 which it regularly computes its receipts in keeping its books shall,
28 before computing its receipts under the new method, secure the
29 consent of the Franchise Tax Board.

30 (f) If the taxpayer does not file with the Franchise Tax Board a
31 request to change the method of accounting, the absence of the
32 consent of the Franchise Tax Board to a change in the method of
33 accounting shall not be taken into account for either of the
34 following:

35 (1) To prevent the imposition of any penalty, or the addition of
36 any amount to tax, under this part.

37 (2) To diminish the amount of that penalty or addition to tax.

38 27932. Section 447 of the Internal Revenue Code, relating to
39 method of accounting for corporations engaged in farming, shall
40 apply, except as otherwise provided.

27934. *Section 448 of the Internal Revenue Code, relating to limitation on use of cash method of accounting, shall apply, except as otherwise provided.*

Article 6. Year of Inclusion

27941. *Section 451 of the Internal Revenue Code, relating to the general rule for taxable year of inclusion, shall apply, except as otherwise provided.*

27942. *Where a business entity subject to the tax imposed by Chapter 2 is engaged in the performance of a contract in this state which will require more than a year to complete, the Franchise Tax Board may require that the gross receipts from the contract be reported on the basis of percentage of completion unless the business entity furnishes bond or other security guaranteeing the payment of a tax measured by the gross receipts received on the completion of the contract even though the business entity is not doing business in this state in the year subsequent to the year of completion.*

27943. (a) *Section 460 of the Internal Revenue Code, relating to special rules for long-term contracts, shall apply, except as otherwise provided.*

(b) (1) *Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall apply to taxable years beginning on or after January 1, 1987.*

(2) *In the case of a contract entered into after February 28, 1986, during a taxable year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the taxable year in which the contract began.*

(c) (1) *The amendments to Section 460 of the Internal Revenue Code made by Section 10203 of Public Law 100-203, relating to a reduction in the percentage of items taken into account under the completed contract method, shall apply to each taxable year beginning on or after January 1, 1990.*

(2) *In the case of a contract entered into after October 13, 1987, during a taxable year beginning before January 1, 1990, an*

1 adjustment to income shall be made upon completion of the
2 contract, if necessary, to correct any underreporting or
3 overreporting of income, for purposes of this part, resulting from
4 differences between state and federal law for each taxable year
5 beginning prior to January 1, 1990.

6 (d) (1) The amendments to Section 460 of the Internal Revenue
7 Code made by Section 5041 of Public Law 100-647, relating to a
8 reduction in the percentage of items taken into account under the
9 completed contract method, shall apply to each taxable year
10 beginning on or after January 1, 1990.

11 (2) In the case of a contract entered into after June 20, 1988,
12 during a taxable year beginning before January 1, 1990, an
13 adjustment to income shall be made upon completion of the
14 contract, if necessary, to correct any underreporting or
15 overreporting of income, for purposes of this part, resulting from
16 differences between state and federal law for each taxable year
17 beginning prior to January 1, 1990.

18 (e) (1) The amendments to Section 460 of the Internal Revenue
19 Code made by Section 7621 of Public Law 101-239, relating to
20 the repeal of the completed contract method of accounting for
21 long-term contracts, shall apply to each taxable year beginning
22 on or after January 1, 1990.

23 (2) In the case of a contract entered into after July 10, 1989,
24 during a taxable year beginning on or before January 1, 1990, an
25 adjustment to income shall be made upon completion of the
26 contract, if necessary, to correct any underreporting or
27 overreporting of income, for purposes of this part, resulting from
28 differences between state and federal law for each taxable year
29 beginning prior to January 1, 1990.

30 (f) For purposes of applying paragraphs (2) to (6), inclusive,
31 of Section 460(b) of the Internal Revenue Code, relating to the
32 look-back method, any adjustment to income computed under
33 paragraph (2) of subdivision (b), (c), (d), or (e) shall be deemed
34 to have been reported in the taxable year from which the
35 adjustment arose, rather than the taxable year in which the
36 contract was completed.

37 27944. Section 461 of the Internal Revenue Code, relating to
38 the general rule for taxable year of deduction of purchases, shall
39 apply, except as otherwise provided.

1 27945. *Section 481 of the Internal Revenue Code, relating to*
2 *adjustments required by changes in method of accounting, shall*
3 *apply, except as otherwise provided.*

4 27946. *The provisions of Section 482 of the Internal Revenue*
5 *Code, relating to allocation of income and deductions among*
6 *taxpayers, shall be applicable, except as provided in Article 2*
7 *(commencing with Section 28110) of Chapter 7.*

8
9 Article 7. *Regulated Investment Companies, Real Estate*
10 *Investment Trusts, and Real Estate Mortgage Investment Trusts*
11

12 27950. *Subchapter M of Chapter 1 of Subtitle A of the Internal*
13 *Revenue Code, relating to regulated investment companies, real*
14 *estate investment trusts, real estate mortgage investment conduits,*
15 *and financial asset securitization investment trusts, shall apply,*
16 *except as otherwise provided in this part.*

17 27951. *Section 852(b)(1) of the Internal Revenue Code, relating*
18 *to imposition of tax on regulated investment companies, does not*
19 *apply.*

20 27952. (a) *A real estate investment trust shall be deemed to*
21 *have satisfied the distribution requirements of Section 857(a)(1)*
22 *of the Internal Revenue Code for purposes of this part if it satisfies*
23 *the distribution requirements of Section 857(a)(1) of the Internal*
24 *Revenue Code for federal purposes.*

25 (b) (1) *Section 857(b)(1) of the Internal Revenue Code, relating*
26 *to imposition of tax on real estate investment trusts, shall not apply.*

27 (2) *Every real estate investment trust shall be subject to the*
28 *taxes imposed under Chapter 2 (commencing with Section 27151).*

29 (c) *Section 857(b)(4)(A) of the Internal Revenue Code, relating*
30 *to the imposition of tax on income from foreclosure property, shall*
31 *not apply.*

32 (d) *Section 857(b)(5) of the Internal Revenue Code, relating to*
33 *the imposition of tax in case of failure to meet certain requirements,*
34 *shall not apply.*

35 (e) *Section 857(b)(6)(A) of the Internal Revenue Code, relating*
36 *to the imposition of tax on income from prohibited transactions,*
37 *shall not apply.*

38 (f) *Section 857(b)(7) of the Internal Revenue Code, relating to*
39 *income from redetermined rents, redetermined deductions, and*
40 *excess interest, shall not apply.*

(g) (1) A corporation, trust, or association that is a real estate investment trust for any taxable year for federal purposes under Part II (commencing with Section 856) of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall be a real estate investment trust for purposes of this part for the same taxable year.

(2) A corporation, trust, or association that is not a real estate investment trust for any taxable year for federal purposes under Part II (commencing with Section 856) of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall not be a real estate investment trust for purposes of this part for the same taxable year.

(h) (1) An election to be a real estate investment trust for federal purposes under Section 856(c)(1) of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall be treated, for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, as an election to be a real estate investment trust for state purposes for the same taxable year and a separate election shall not be allowed.

(2) The termination or revocation of an election described in paragraph (1) for federal purposes under Section 856(g) of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall be treated, for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, as a termination or revocation, as the case may be, of an election described in paragraph (1) for state purposes and a separate termination or revocation of an election shall not be allowed.

27953. Section 860F(a) of the Internal Revenue Code, relating to the 100 percent tax on prohibited transactions, shall not apply.

27954. (a) Section 860H(b) of the Internal Revenue Code, relating to the taxation of holder of ownership interest, shall be modified as follows:

(1) All activities of a FASIT shall be treated as activities, including for purposes of Section 27101, of the holder of the ownership interest in the FASIT.

(2) Section 860H(b)(3) of the Internal Revenue Code, shall not apply.

(b) Section 860J(d) of the Internal Revenue Code, relating to affiliated groups, shall not apply.

(c) A reference to the “rate of tax specified in Section 27151” shall be substituted for “highest rate of tax specified in Section 11(b)(1)” of the Internal Revenue Code, contained in Section 860K of the Internal Revenue Code, relating to treatment of transfers of high-yield interests to disqualified holders.

(d) Section 860L(b)(1)(A) of the Internal Revenue Code is modified by substituting the phrase “on or after the startup date” for the phrase “after the startup date.”

(e) Section 860L(d)(2) of the Internal Revenue Code is modified by substituting a reference to Section 860I(b)(2) of the Internal Revenue Code in lieu of the reference to Section 860I(c)(2) of the Internal Revenue Code.

(f) Section 860L(e) of the Internal Revenue Code, relating to tax on prohibited transactions, shall not apply.

(g) For purposes of Chapter 4 of Part 10.2 (commencing with Section 19001) the taxes imposed by this section shall be treated as taxes to which the deficiency procedures of that article apply.

Article 8. Gain or Loss on Disposition of Property

27961. (a) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in Section 27971 for determining gain, and the loss shall be the excess of the adjusted basis provided in that section for determining loss over the amount realized.

(b) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized:

(1) There shall not be taken into account any amount received as reimbursement for real property taxes.

(2) There shall be taken into account amounts representing real property taxes.

(c) In the case of a sale or exchange of property, the extent to which the gain or loss determined under this section shall be recognized for purposes of this part shall be determined under Section 27962.

(d) Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment

1 *representing gain or profit in the year in which that payment is*
2 *received.*

3 *(e) (1) In determining gain or loss from the sale or other*
4 *disposition of a term interest in property, that portion of the*
5 *adjusted basis of that interest which is determined pursuant to*
6 *Sections 27974 and 27975 (to the extent that the adjusted basis is*
7 *a portion of the entire adjusted basis of the property) shall be*
8 *disregarded.*

9 *(2) For purposes of paragraph (1), the term “term interest in*
10 *property” means any of the following:*

11 *(A) A life interest in property.*

12 *(B) An interest in property for a term of years.*

13 *(C) An income interest in a trust.*

14 *(3) Paragraph (1) shall not apply to a sale or other disposition*
15 *which is a part of a transaction in which the entire interest in*
16 *property is transferred to any person or persons.*

17 *27962. On the sale or exchange of property, the following rules*
18 *shall apply:*

19 *(a) In the case of the sale or exchange of property acquired*
20 *prior to January 1, 2012, the entire amount of the gain or loss,*
21 *determined under Section 27961, shall be recognized and included*
22 *in gross receipts.*

23 *(b) In the case of the sale or exchange of property acquired*
24 *after December 31, 2012, the entire amount of money or other*
25 *property received shall be included in gross receipts.*

26 *27965. (a) Section 988 of the Internal Revenue Code, relating*
27 *to treatment of certain foreign currency transactions, shall apply,*
28 *except as otherwise provided.*

29 *(b) Section 988(a)(3) of the Internal Revenue Code, relating to*
30 *source, shall not apply.*

31
32 *Article 9. Basis for Computation of Gain or Loss*
33

34 *27971. The adjusted basis for determining the gain or loss*
35 *from the sale or other disposition of property acquired prior to*
36 *January 1, 2013, shall be the basis (determined under Section*
37 *27912) or other applicable sections of Article 8 (relating to gain*
38 *or loss on disposition of property) and Article 3 (relating to*
39 *corporate distributions and adjustments), adjusted as provided in*
40 *Sections 27976 and 27977.*

1 27972. *The basis of property shall be the cost of the property,*
2 *except as otherwise provided in Chapter 8 (commencing with*
3 *Section 27911), relating to corporate distributions and adjustments,*
4 *and this chapter. The cost of real property shall not include any*
5 *amount in respect of real property taxes which are treated as*
6 *imposed on a taxpayer.*

7 27973. *If the property should have been included in the last*
8 *inventory, the basis shall be the last inventory value thereof.*

9 27974. (a) *If the property was acquired by gift after December*
10 *31, 1920, the basis shall be the same as it would be in the hands*
11 *of the donor or the last preceding owner by whom it was not*
12 *acquired by gift, except that if such basis (adjusted for the period*
13 *before the date of the gift as provided in Sections 27976 and 27977)*
14 *is greater than the fair market value of the property at the time of*
15 *the gift, then for the purpose of determining loss the basis shall*
16 *be such fair market value. If the facts necessary to determine the*
17 *basis in the hands of the donor or the last preceding owner are*
18 *unknown to the donee, the Franchise Tax Board shall, if possible,*
19 *obtain such facts from such donor or last preceding owner, or any*
20 *other person cognizant thereof. If the Franchise Tax Board finds*
21 *it impossible to obtain such facts, the basis in the hands of such*
22 *donor or last preceding owner shall be the fair market value of*
23 *such property as found by the Franchise Tax Board as of the date*
24 *or approximate date at which, according to the best information*
25 *that the Franchise Tax Board is able to obtain, such property was*
26 *acquired by such donor or last preceding owner.*

27 (b) *If the property was acquired after December 31, 1920, by*
28 *a transfer in trust (other than by a transfer in trust by a gift,*
29 *bequest, or devise), the basis shall be the same as it would be in*
30 *the hands of the grantor increased in the amount of gain or*
31 *decreased in the amount of loss recognized to the grantor on such*
32 *transfer under the law applicable to the year in which the transfer*
33 *was made.*

34 27975. (a) *If the property is acquired by gift on or after the*
35 *date of the enactment of this section, the basis shall be the basis*
36 *determined under Section 27974, increased (but not above the fair*
37 *market value of the property at the time of the gift) by the amount*
38 *of federal gift tax paid with respect to such gift or the property*
39 *was acquired by gift before the date of the enactment of this section*
40 *and has not been sold, exchanged, or otherwise disposed of before*

1 such date, the basis of the property shall be increased on such date
2 by the amount of federal gift tax paid with respect to such gift, but
3 such increase shall not exceed an amount equal to the amount by
4 which the fair market value of the property at the time of the gift
5 exceeded the basis of the property in the hands of the donor at the
6 time of the gift.

7 (b) For purposes of subdivision (a), the amount of federal gift
8 tax paid with respect to any gift is an amount which bears the same
9 ratio to the amount of gift tax paid under Chapter 12 of Subtitle
10 B of the Internal Revenue Code with respect to all gifts made by
11 the donor for the calendar year in which such gift is made as the
12 amount of such gift bears to the taxable gifts (as defined in Section
13 2503(a) of the Internal Revenue Code but computed without the
14 deduction allowed by Section 2521 of the Internal Revenue Code)
15 made by the donor during such calendar year. For purposes of
16 the preceding sentence, the amount of any gift shall be the amount
17 included with respect to such gift in determining (for the purposes
18 of Section 2503(a) of the Internal Revenue Code) the total amount
19 of gifts made during the calendar year, reduced by the amount of
20 any deduction allowed with respect to such gift under Section 2522
21 of the Internal Revenue Code (relating to charitable deduction)
22 or under Section 2523 of the Internal Revenue Code (relating to
23 marital deduction).

24 (c) For purposes of subdivision (a), where the donor and his or
25 her spouse elected, under Section 2513 of the Internal Revenue
26 Code to have the gift considered as made one-half by each, the
27 amount of gift tax paid with respect to such gift under Chapter 12
28 of Subtitle B of the Internal Revenue Code shall be the sum of the
29 amounts of tax paid with respect to each half of such gift (computed
30 in the manner provided in subdivision (b)).

31 (d) For purposes of Section 27977, an increase in basis under
32 subdivision (a) shall be treated as an adjustment under Section
33 27976.

34 (e) With respect to any property acquired by gift before 1955,
35 references in this section to any provision of this part shall be
36 deemed to refer to the corresponding provision of the Internal
37 Revenue Code or prior revenue laws which was effective for the
38 year in which such gift was made.

1 27976. *In the case of any property acquired prior to January*
2 *1, 2012, proper adjustment with regard to the property shall in*
3 *all cases be made as follows:*

4 (a) *For expenditures, receipts, losses, or other items properly*
5 *chargeable to capital account.*

6 (b) *For exhaustion, wear and tear, obsolescence, amortization,*
7 *and depletion:*

8 (1) *In the case of taxpayers subject to the tax imposed by*
9 *Chapter 2 (commencing with Section 27101), to the extent*
10 *sustained prior to January 1, 1928, and to the extent allowed (but*
11 *not less than the amount allowable) under this part, except that*
12 *no deduction shall be made for amounts in excess of the amount*
13 *that would have been allowable had depreciation not been*
14 *computed on the basis of January 1, 1928, value and amounts in*
15 *excess of the adjustments required by Section 113(b)(1)(B) of the*
16 *Federal Revenue Act of 1938 for depletion prior to January 1,*
17 *1932.*

18 (2) *In the case of a taxpayer subject to the tax imposed by*
19 *Chapter 3 (commencing with Section 27501), to the extent*
20 *sustained prior to January 1, 1937, and for periods thereafter to*
21 *the extent allowed (but not less than the amount allowable) under*
22 *the provisions of this part.*

23 (3) *If a taxpayer has not claimed an amortization deduction for*
24 *an emergency facility, the adjustment under paragraph (1) shall*
25 *be made only to the extent ordinarily provided.*

26 (c) *In the case of stock (to the extent not provided for in the*
27 *foregoing subdivisions) for the amount of distributions previously*
28 *made which, under the law applicable to the year in which the*
29 *distribution was made, either were tax free or were applicable in*
30 *reduction of basis (not including distributions made by a*
31 *corporation, which was classified as a personal service corporation*
32 *under the provisions of the Federal Revenue Act of 1918 or 1921,*
33 *out of its earnings or profits which were taxable in accordance*
34 *with the provisions of Section 218 of the Federal Revenue Act of*
35 *1918 or 1921).*

36 (d) (1) *In the case of corporations subject to the tax imposed*
37 *by Chapter 2 (commencing with Section 27101), in the case of any*
38 *bond, to the extent of the deductions allowable with respect thereto.*

39 (2) *In the case of taxpayers subject to the tax imposed by*
40 *Chapter 3 (commencing with Section 27501), in the case of any*

1 bond, the interest on which is wholly exempt from the tax imposed
2 by this part, to the extent of the amortizable bond premium
3 disallowable as a deduction, and in the case of any other bond, to
4 the extent of the deductions allowable with respect thereto.

5 (3) In the case of property pledged to the Commodity Credit
6 Corporation, to the extent of the amount received as a loan from
7 the Commodity Credit Corporation and treated by the taxpayer
8 as a gross receipt for the year in which received, and to the extent
9 of any deficiency on that loan with respect to which the taxpayer
10 has been relieved from liability.

11 (e) For amounts allowed as deductions as deferred expenses
12 under Section 616(b) of the Internal Revenue Code, relating to
13 certain expenditures in the development of mines, and resulting
14 in a reduction of the taxpayer's tax, but not less than the amounts
15 allowable under that section for the taxable year and prior years.

16 (f) For amounts allowable as deductions as deferred expenses
17 under Section 617(a) of the Internal Revenue Code, relating to
18 certain exploration expenditures, and resulting in a reduction of
19 the taxpayer's tax, but not less than the amounts allowable under
20 that section for the taxable year and prior years.

21 (g) For amounts allowed as deductions as deferred expenses ,
22 relating to research and experimental expenditures, and resulting
23 in a reduction of the corporation's taxes under this part, but not
24 less than the amounts allowable under that section for the taxable
25 year and prior years.

26 (h) (1) To the extent provided in Section 179A(e)(6)(A) of the
27 Internal Revenue Code, relating to basis reduction for clean-fuel
28 vehicles and certain refueling property.

29 (2) This subdivision shall apply to property placed in service
30 after June 30, 1993, without regard to taxable year.

31 (i) In the case of property the acquisition of which resulted
32 under Section 1044 of the Internal Revenue Code, relating to
33 rollover of publicly traded securities gain into specialized small
34 business investment companies, in the nonrecognition of any part
35 of the gain realized on the sale of other property, to the extent
36 provided in Section 1044(d) of the Internal Revenue Code, relating
37 to basis adjustments.

38 27976.2. Notwithstanding the provisions of Section 27976, no
39 adjustment shall be made for (a) abandonment fees paid in respect
40 of property on which the open-space easement is terminated under

1 *Section 51061 or 51093 of the Government Code or (b) tax*
 2 *recoupment fees paid under Section 51142 of the Government*
 3 *Code.*

4 *27977. Whenever it appears that the basis of property in the*
 5 *hands of the corporation is a substituted basis, then the adjustments*
 6 *provided in Section 27976 shall be made after first making in*
 7 *respect of that substituted basis proper adjustments of a similar*
 8 *nature in respect of the period during which the property was held*
 9 *by the transferor, donor, or grantor, or during which the other*
 10 *property was held by the person for whom the basis is to be*
 11 *determined. A similar rule shall be applied in the case of a series*
 12 *of substituted bases.*

13 *27978. (a) Section 1017 of the Internal Revenue Code, relating*
 14 *to discharge of indebtedness, shall apply, except as otherwise*
 15 *provided.*

16 *(b) References to affiliated groups which file a consolidated*
 17 *return under Section 1501 of the Internal Revenue Code shall be*
 18 *treated as meaning members of the same unitary group which file*
 19 *a combined report under Article 1 (commencing with Section*
 20 *28101) of Chapter 7.*

21 *27979. Neither the basis nor the adjusted basis of any portion*
 22 *of real property shall, in the case of the lessor of such property,*
 23 *be increased or diminished on account of income derived by the*
 24 *lessor in respect of such property and excludable from gross*
 25 *income under Section 24309 (relating to improvements by lessee*
 26 *on lessor's property). If an amount representing any part of the*
 27 *value of real property attributable to buildings erected or other*
 28 *improvements made by a lessee in respect of such property was*
 29 *included in gross income of the lessor for any taxable year*
 30 *beginning before January 1, 1942, the basis of each portion of*
 31 *such property shall be properly adjusted for the amount so included*
 32 *in gross income.*

34 *Article 10. Exchanges and Special Rules*

36 *27981. Part III of Subchapter O of Chapter 1 of Subtitle A of*
 37 *the Internal Revenue Code, relating to common nontaxable*
 38 *exchanges, shall not apply.*

39 *27982. If the basis of an asset acquired by a taxpayer before*
 40 *the operative date of this part is relevant for determining the tax*

1 *imposed under this part, the basis of that asset, as of the last day*
2 *of the last taxable year of that taxpayer subject to Part 11*
3 *(commencing with Section 23001) shall be the basis of that asset,*
4 *as of the first day of the first taxable year of the taxpayer subject*
5 *to this part.*

6 27983. *Section 1060 of the Internal Revenue Code, relating to*
7 *special allocation rules for certain asset acquisitions, shall apply,*
8 *except as otherwise provided.*

9 27988. *Subchapter P of Chapter 1 of Subtitle A of the Internal*
10 *Revenue Code, relating to capital gains and losses, shall apply,*
11 *except as otherwise provided.*

12
13 *CHAPTER 7. ALLOCATION OF BUSINESS NET RECEIPTS*
14

15 *Article 1. Basis of Allocation*
16

17 28101. *When the net receipts of a taxpayer subject to the tax*
18 *imposed under this part is derived from or attributable to sources*
19 *both within and without this state, the tax shall be measured by*
20 *the net receipts derived from or attributable to sources within this*
21 *state in accordance with the provisions of Article 3 (commencing*
22 *with Section 28120). If the Franchise Tax Board reapportions net*
23 *receipts upon its examination of any return, it shall, upon the*
24 *written request of the taxpayer, disclose to it the basis upon which*
25 *its reapportionment has been made.*

26 28101.15. *If the net receipts of two or more taxpayers derived*
27 *solely from sources within this state and their business activities*
28 *are such that if conducted within and without this state a combined*
29 *report would be required to determine their business net receipts*
30 *derived from sources within this state, then such taxpayers shall*
31 *be allowed to determine their business net receipts in accordance*
32 *with Section 28101.*

33 28102. *In the case of two or more persons, as defined in Section*
34 *19 of this code, owned or controlled directly or indirectly by the*
35 *same interests, the Franchise Tax Board may permit or require*
36 *the filing of a combined report and such other information as it*
37 *deems necessary and is authorized to impose the tax due under*
38 *this part as though the combined entire net receipts was that of*
39 *one person, or to distribute, apportion, or allocate the gross*
40 *receipts or purchases between or among such persons, if it*

1 *determines that such consolidation, distribution, apportionment,*
2 *or allocation is necessary in order to reflect the proper net receipts*
3 *of any such persons.*

4 28103. *In the case of a business entity doing business within*
5 *the meaning of this part, whether under agreement or otherwise,*
6 *in such manner as either directly or indirectly to benefit the owners*
7 *of the business entity, or any of them, or any person or persons,*
8 *directly or indirectly interested in such business, by rendering*
9 *services of any nature whatsoever, or acquiring or disposing of*
10 *its products or the goods or commodities in which it deals, at less*
11 *than a fair price therefor, the Franchise Tax Board, in order to*
12 *prevent evasion of taxes or clearly to reflect the net receipts of*
13 *such corporation, may require a report of such facts as it deems*
14 *necessary, and may determine the amount which shall be deemed*
15 *to be the entire net receipts allocable or apportionable to this state*
16 *of the business of such business entity for the calendar or fiscal*
17 *year, and compute the tax upon such net receipts. In determining*
18 *the entire net receipts, the Franchise Tax Board shall have regard*
19 *to the fair profits which, but for any agreement, arrangement, or*
20 *understanding, might be or could have been obtained from dealing*
21 *in such products, goods, or commodities.*

22 28104. *In the case of a business entity liable to report under*
23 *this part owning or controlling, either directly or indirectly,*
24 *another business entity, or other business entities, and in the case*
25 *of a business entity liable to report under this part and owned or*
26 *controlled, either directly or indirectly, by another business entity,*
27 *the Franchise Tax Board may require a consolidated report*
28 *showing the combined net receipts or such other facts as it deems*
29 *necessary. The Franchise Tax Board is authorized and empowered,*
30 *in such manner as it may determine, to assess the tax against either*
31 *of the business entities whose net receipts is involved in the report*
32 *upon the basis of the combined entire net receipts and such other*
33 *information as it may possess, or it may adjust the tax in such*
34 *other manner as it shall determine to be equitable if it determines*
35 *it to be necessary in order to prevent evasion of taxes or to clearly*
36 *reflect the net receipts earned by said business entity or business*
37 *entities from business done in this state.*

38 28105. (a) *For purposes of this article, other than Section*
39 *28102, the net receipts and sales factors of two or more business*
40 *entities shall be included in a combined report only if the business*

1 entity, otherwise meeting the requirements of Section 28101 or
2 28101.15, are members of a commonly controlled group.

3 (b) For purposes of this section, the words “common controlled
4 group” shall mean that more than 50 percent of the voting control
5 of each member of the group is directly or indirectly owned by a
6 common owner or owners, either corporate or noncorporate,
7 whether or not the owner or owners are members of the combined
8 group. A group of corporations under common ownership may be
9 engaged in one or more unitary businesses.

10 (c) Any business conducted by a partnership shall be treated
11 as the business of the partners, whether the partnership interest
12 is directly held or indirectly held through a series of partnerships,
13 to the extent of the partner’s distributive share of the partnership’s
14 income, regardless of the magnitude of the partner’s ownership
15 interest or its distributive share of partnership income.

16 (d) A business conducted directly or indirectly by one
17 corporation is unitary with that portion of a business conducted
18 by another, commonly owned corporation through its direct or
19 indirect interest in a partnership if the activities conducted by the
20 former corporation and the partnership are unitary, regardless of
21 the magnitude of the partner’s ownership interest or its distributive
22 or any other share of partnership income.

23 28105.5. The Franchise Tax Board may adopt regulations
24 necessary to ensure that the tax liability or net receipts of any
25 taxpayer whose net receipts derived from or attributable to sources
26 within this state which is required to be determined by a combined
27 report pursuant to Section 28101 or 28110 of this chapter, and of
28 each entity included in the combined report, both during and after
29 the period of inclusion in the combined report is properly reported,
30 determined, computed, assessed, collected, or adjusted.

31 Article 2. Water’s-Edge Combined Reporting

32
33 28110. (a) Business entities that comprise a unitary business
34 shall file a combined report on a water’s-edge basis.

35 (b) The term “unitary business” shall mean the activities of a
36 group of two or more entities under common control that are
37 sufficiently interdependent, integrated, or interrelated through
38 their activities so as to provide mutual benefit and produce a
39 significant sharing or exchange of value among them or a
40

1 significant flow of value between the separate parts. The term
2 unitary business shall be construed to the broadest extent permitted
3 under the United States Constitution.

4 (c) A taxpayer that is a member of a water's-edge group shall
5 combine the business net receipts of each business entity in the
6 group, so as to allow the offset of the excess business purchases
7 (from other businesses) of one entity against the net business
8 receipts of another entity in the same group.

9 (d) A taxpayer that is a member of a water's-edge group shall
10 take into account the net receipts and sales factor of the following
11 affiliated entities to the extent provided below:

12 (1) The entire business net receipts and single sales factor of
13 any of the following:

14 (A) Domestic international sales corporations, as described in
15 Sections 991 to 994, inclusive, of the Internal Revenue Code and
16 foreign sales corporations as described in Sections 921 to 927,
17 inclusive, of the Internal Revenue Code.

18 (B) Any corporation or other business entity (other than a bank),
19 regardless of the place where it is incorporated if the average of
20 its property, payroll, and sales factors within the United States is
21 20 percent or more.

22 (C) Corporations and other business entities that are
23 incorporated or formed in the United States, excluding
24 corporations making an election pursuant to Sections 931 to 936,
25 inclusive, of the Internal Revenue Code.

26 (D) Export trade corporations, as described in Sections 970 to
27 972, inclusive, of the Internal Revenue Code.

28 (E) (i) Subject to clause (ii), any business entity that, for any
29 portion of the taxable year, has business net receipts derived from
30 or attributable to, a tax haven.

31 (ii) If the application of subparagraph (A) results in the inclusion
32 of a business activity in, or business net receipts derived from or
33 attributable to, a tax haven that constitutes either a substantial
34 economic presence or significant economic activity in that
35 jurisdiction, the taxpayer may petition the Franchise Tax Board
36 to treat the activity and business net receipts of that corporation
37 as not having been conducted in, or derived from or attributable
38 to, the tax haven.

39 (iii) The Franchise Tax Board shall prescribe any regulation
40 that may be necessary or appropriate to carry out the purposes of

1 *this subparagraph, including regulations prescribing the extent*
2 *to which an activity in, or business net receipts derived from or*
3 *attributable to, a tax haven will be presumed to be either a*
4 *substantial economic presence or significant economic activity,*
5 *and the extent to which business net receipts will be presumed to*
6 *be not derived from or attributable to a tax haven.*

7 *(2) With respect to a business entity that is not described in*
8 *subparagraphs (A), (B), (C), and (D) of paragraph (1):*

9 *(A) The business net receipts and single sales factor of such*
10 *business entity to the extent of its business net receipts derived*
11 *from or attributable to sources within the United States and its*
12 *single sales factor assignable to a location within the United States*
13 *in accordance with paragraph (2) of subdivision (d). The business*
14 *net receipts of a business entity are derived from or attributable*
15 *to sources within the United States if the related gross income is*
16 *derived from or attributable to sources within the United States*
17 *as determined by federal income tax laws.*

18 *(B) Any business entity that earns more than 20 percent of its*
19 *receipts, directly or indirectly, from intangible property or service*
20 *related activities that are deductible against the business receipts*
21 *of other members of the combined group, to the extent of those*
22 *receipts and the apportionment factors related thereto.*

23 *(3) For purposes of this section, a “tax haven” means any of*
24 *the 39 jurisdictions that, as of December of _____, were identified*
25 *as tax havens by the Organization for Economic Cooperation and*
26 *Development (OECD).*

27 *28114. (a) The Franchise Tax Board, for purposes of*
28 *administering this article, may examine all returns filed by*
29 *taxpayers subject to these provisions.*

30 *(b) (1) In the case of any transfer, or license, of intangible*
31 *property, within the meaning of Section 936(h)(3)(B) of the Internal*
32 *Revenue Code, the net receipts with respect to that transfer or*
33 *license shall be commensurate with the net receipts attributable*
34 *to the intangible property.*

35 *(2) In making distributions, apportionments, and allocations*
36 *under this section, the Franchise Tax Board shall generally follow*
37 *the rules, regulations, and procedures of the Internal Revenue*
38 *Service in making audits under Section 482 of the Internal Revenue*
39 *Code. Any of these rules, regulations, and procedures adopted by*

1 *the Franchise Tax Board shall not be subject to review by the*
2 *Office of Administrative Law.*

3 *(3) If the Internal Revenue Service has conducted a detailed*
4 *audit pursuant to Section 482 of the Internal Revenue Code or*
5 *Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue*
6 *Code and has made adjustments pursuant to those provisions, it*
7 *shall be presumed, to the extent that the provisions relate to the*
8 *determination of the amount of net receipts and amounts in the*
9 *sales factor required to be taken into account pursuant to Section*
10 *28110, that no further adjustments are necessary for this state's*
11 *purposes. If the Internal Revenue Service has conducted a detailed*
12 *audit pursuant to Section 482 of the Internal Revenue Code or*
13 *Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue*
14 *Code and has made or proposed no adjustments to the transactions*
15 *examined, it shall be presumed, to the extent that the provisions*
16 *relate to the determination of the amount of net receipts and*
17 *amounts in the sales factor required to be taken into account*
18 *pursuant to Section 28110, that no adjustment is necessary for this*
19 *state's purposes. These presumptions apply to all Internal Revenue*
20 *Service audit determinations, including determinations made by*
21 *the Appeals and Competent Authority. These presumptions shall*
22 *be overcome if the Franchise Tax Board or the taxpayer*
23 *demonstrates that an adjustment or a failure to make an adjustment*
24 *was erroneous, if it demonstrates that the results of such an*
25 *adjustment would produce a minimal tax change for federal*
26 *purposes because of correlative or offsetting adjustments or for*
27 *other reasons, or if substantially the same federal tax result was*
28 *obtained under other sections of the Internal Revenue Code. No*
29 *inference shall be drawn from an Internal Revenue Service failure*
30 *to audit international transactions pursuant to Section 482 of the*
31 *Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle*
32 *A of the Internal Revenue Code and it shall not be presumed that*
33 *any of those transactions were correctly reported.*

34
35 *Article 3. Allocation and Apportionment of Net Receipts*
36

37 *28120. As used in Sections 28120 to 28139, inclusive, unless*
38 *the context otherwise requires:*

39 *(a) "Business receipts" means receipts arising from transactions*
40 *and activity in the regular course of the taxpayer's trade or*

1 *business and includes receipts from tangible and intangible*
2 *property if the acquisition, management, and disposition of the*
3 *property constitute integral parts of the taxpayer's regular trade*
4 *or business operations.*

5 (b) *“Commercial domicile” means the principal place from*
6 *which the trade or business of the taxpayer is directed or managed.*

7 (c) *“Compensation” means wages, salaries, commissions, and*
8 *any other form of remuneration paid to employees for personal*
9 *services.*

10 (d) *“Nonbusiness receipts” means all receipts other than*
11 *business receipts.*

12 (e) (1) *“Sales” means all gross receipts of the taxpayer not*
13 *allocated under Sections 28123 to 28127, inclusive.*

14 (2) *“Gross receipts” means the gross amounts realized (the*
15 *sum of money and the fair market value of other property or*
16 *services received) on the sale or exchange of property, the*
17 *performance of services, or the use of property or capital*
18 *(including rents, royalties, interest, and dividends) in a transaction*
19 *that produces business income, in which the income, gain, or loss*
20 *is recognized (or would be recognized if the transaction were in*
21 *the United States) under the Internal Revenue Code, as applicable*
22 *for purposes of this part. Amounts realized on the sale or exchange*
23 *of property shall not be reduced by the cost of goods sold or the*
24 *basis of property sold. Gross receipts, even if business income,*
25 *shall not include the following items:*

26 (A) *Repayment, maturity, or redemption of the principal of a*
27 *loan, bond, mutual fund, certificate of deposit, or similar*
28 *marketable instrument.*

29 (B) *The principal amount received under a repurchase*
30 *agreement or other transaction properly characterized as a loan.*

31 (C) *Proceeds from issuance of the taxpayer's own stock or from*
32 *sale of treasury stock.*

33 (D) *Damages and other amounts received as the result of*
34 *litigation.*

35 (E) *Property acquired by an agent on behalf of another.*

36 (F) *Tax refunds and other tax benefit recoveries.*

37 (G) *Pension reversions.*

38 (H) *Contributions to capital (except for sales of securities by*
39 *securities dealers).*

40 (I) *Income from discharge of indebtedness.*

1 (J) Amounts realized from exchanges of inventory that are not
2 recognized under the Internal Revenue Code.

3 (K) Amounts received from transactions in intangible assets
4 held in connection with a treasury function of the taxpayer's
5 unitary business and the gross receipts and overall net gains from
6 the maturity, redemption, sale, exchange, or other disposition of
7 those intangible assets. For purposes of this subparagraph,
8 "treasury function" means the pooling, management, and
9 investment of intangible assets for the purpose of satisfying the
10 cash flow needs of the taxpayer's trade or business, such as
11 providing liquidity for a taxpayer's business cycle, providing a
12 reserve for business contingencies, and business acquisitions, and
13 also includes the use of futures contracts and options contracts to
14 hedge foreign currency fluctuations. A taxpayer principally
15 engaged in the trade or business of purchasing and selling
16 intangible assets of the type typically held in a taxpayer's treasury
17 function, such as a registered broker-dealer, is not performing a
18 treasury function, for purposes of this subparagraph, with respect
19 to income so produced.

20 (L) Amounts received from hedging transactions involving
21 intangible assets. A "hedging transaction" means a transaction
22 related to the taxpayer's trading function involving futures and
23 options transactions for the purpose of hedging price risk of the
24 products or commodities consumed, produced, or sold by the
25 taxpayer.

26 (M) Where substantial amounts of gross receipts arise from an
27 occasional sale of a fixed asset or other property held or used in
28 the regular course of the taxpayer's trade or business, such gross
29 receipts shall be excluded from the sales factor. For example,
30 gross receipts from the sale of a factory, patent, or affiliate's stock
31 will be excluded if substantial. For purposes of this subdivision,
32 sales of assets to the same purchaser in a single year will be
33 aggregated to determine if the combined gross receipts are
34 substantial.

35 (i) For purposes of this subparagraph, a sale is substantial if
36 its exclusion results in a 5 percent or greater decrease in the sales
37 factor denominator of the taxpayer or, if the taxpayer is part of a
38 combined reporting group, a 5 percent or greater decrease in the
39 sales factor denominator of the group as a whole.

1 (ii) For purposes of this subparagraph, a sale is occasional if
2 the transaction is outside of the taxpayer's normal course of
3 business and occurs infrequently.

4 (3) Exclusion of an item from the definition of "gross receipts"
5 shall not be determinative of its character as business or
6 nonbusiness income.

7 (f) "State" means any state of the United States, the District of
8 Columbia, the Commonwealth of Puerto Rico, any territory or
9 possession of the United States, and any foreign country or political
10 subdivision thereof.

11 28121. Any taxpayer having receipts from business activity
12 which is taxable both within and without this state shall allocate
13 and apportion its net receipts as provided in this article.

14 28122. For purposes of allocation and apportionment of net
15 receipts under this article, a taxpayer is taxable in another state
16 if (a) in that state it is subject to a value-added tax, an income tax,
17 a franchise tax measured by income, a franchise tax for the
18 privilege of doing business, or a corporate stock tax, or (b) that
19 state has jurisdiction to subject the taxpayer to a value-added tax
20 or to an income tax regardless of whether, in fact, the state does
21 or does not.

22 28123. Rents and royalties from real or tangible personal
23 property, capital gains, a patent or copyright royalties, to the
24 extent that they constitute nonbusiness receipts, shall be allocated
25 as provided in Sections 28124 to 28127, inclusive, of this article.

26 28124. (a) Rents and royalties from real property located in
27 this state are allocable to this state.

28 (b) Rent and royalties from tangible personal property are
29 allocable to this state:

30 (1) If and to the extent that the property is utilized in this state.

31 (2) In their entirety if the taxpayer's commercial domicile is in
32 this state and the taxpayer is not organized under the laws of or
33 taxable in the state in which the property is utilized.

34 (c) The extent of utilization of tangible personal property in a
35 state is determined by multiplying the rents and royalties by a
36 fraction, the numerator of which is the number of days of physical
37 location of the property in the state during the rental or royalty
38 period in the taxable year and the denominator of which is the
39 number of days of physical location of the property everywhere
40 during all rental or royalty periods in the taxable year. If the

1 *physical location of the property during the rental or royalty period*
2 *is unknown or unascertainable by the taxpayer, tangible personal*
3 *property is utilized in the state in which the property was located*
4 *at the time the rental or royalty payer obtained possession.*

5 28125. (a) *Gross receipts from sales of real property located*
6 *in this state are allocable to this state.*

7 (b) *Gross receipts from sales of tangible personal property are*
8 *allocable to this state if:*

9 (1) *The property had a situs in this state at the time of the sale.*

10 (2) *The taxpayer's commercial domicile is in this state and the*
11 *taxpayer is not taxable in the state in which the property had a*
12 *situs.*

13 (c) *Except in the case of the sale of a partnership interest,*
14 *capital gains and losses from sales of intangible personal property*
15 *are allocable to this state if the taxpayer's commercial domicile*
16 *is in this state.*

17 28127. (a) *Patent and copyright royalties are allocable to this*
18 *state:*

19 (1) *If and to the extent that the patent or copyright is utilized*
20 *by the payer in this state.*

21 (2) *If and to the extent that the patent or copyright is utilized*
22 *by the payer in a state in which the taxpayer is not taxable and the*
23 *taxpayer's commercial domicile is in this state.*

24 (b) *A patent is utilized in a state to the extent that it is employed*
25 *in production, fabrication, manufacturing, or other processing in*
26 *the state or to the extent that a patented product is produced in*
27 *the state. If the basis of receipts from patent royalties does not*
28 *permit allocation to states or if the accounting procedures do not*
29 *reflect states of utilization, the patent is utilized in the state in*
30 *which the taxpayer's commercial domicile is located.*

31 (c) *A copyright is utilized in a state to the extent that printing*
32 *or other publication originates in the state. If the basis of receipts*
33 *from copyright royalties does not permit allocation to states or if*
34 *the accounting procedures do not reflect states of utilization, the*
35 *copyright is utilized in the state in which the taxpayer's commercial*
36 *domicile is located.*

37 28128. *All business receipts shall be apportioned to this state*
38 *by multiplying the business net receipts by the sales factor.*

1 28129. *The property in this state means the average value of*
2 *the taxpayer's real and tangible personal property owned or rented*
3 *and used in this state during the taxable year.*

4 28130. *Property owned by the taxpayer is valued at its original*
5 *cost. Property rented by the taxpayer is valued at eight times the*
6 *net annual rental rate. Net annual rental rate is the annual rental*
7 *rate paid by the taxpayer less any annual rental rate received by*
8 *the taxpayer from subrentals.*

9 28131. *The average value of property shall be determined by*
10 *averaging the values at the beginning and ending of the taxable*
11 *year but the Franchise Tax Board may require the averaging of*
12 *monthly values during the taxable year if reasonably required to*
13 *reflect properly the average value of the taxpayer's property.*

14 28133. *Compensation is paid in this state if:*

15 (a) *The individual's service is performed entirely within the*
16 *state.*

17 (b) *The individual's service is performed both within and without*
18 *the state, but the service performed without the state is incidental*
19 *to the individual's service within the state.*

20 (c) *Some of the service is performed in the state and (1) the base*
21 *of operations or, if there is no base of operations, the place from*
22 *which the service is directed or controlled is in the state, or (2)*
23 *the base of operations or the place from which the service is*
24 *directed or controlled is not in any state in which some part of the*
25 *service is performed, but the individual's residence is in this state.*

26 28134. *The sales factor is a fraction, the numerator of which*
27 *is the total sales of the taxpayer in this state during the taxable*
28 *year, and the denominator of which is the totals sales of the*
29 *taxpayer everywhere during the taxable year.*

30 28135. *Sales of tangible personal property are in this state if:*

31 (a) *The property is delivered or shipped to a purchaser, other*
32 *than the United States government, within this state regardless of*
33 *the f.o.b. point or other conditions of the sale.*

34 (b) *The property is shipped from an office, store, warehouse,*
35 *factory, or other place of storage in this state and (1) the purchaser*
36 *is the United States government or (2) the taxpayer is not taxable*
37 *in the state of the purchaser.*

38 (c) *For purposes of determining whether sales are in this state*
39 *and included in the numerator of the sales factor, all sales of the*
40 *combined reporting group properly assigned to this state under*

1 *this section shall be included in the sales factor numerator for this*
2 *state regardless of whether the member of the combined reporting*
3 *group making the sale is subject to the business net receipts tax*
4 *imposed under Section 27151. All sales not assigned to this state*
5 *pursuant to subdivision (a) shall not be included in the sales factor*
6 *numerator for this state if a member of the combined reporting*
7 *group of the taxpayer is taxable in the state of the purchaser.*

8 *(d) The Franchise Tax Board may prescribe regulations as*
9 *necessary or appropriate to carry out the purposes of this section.*

10 28136. *(a) Sales, other than sales of tangible personal*
11 *property, are in this state as follows:*

12 *(1) Sales from services are in this state to the extent the*
13 *purchaser of the service received the benefit of the service in this*
14 *state.*

15 *(2) Sales from intangible property are in this state to the extent*
16 *the property is used in this state. In the case of marketable*
17 *securities, sales are in this state if the customer is in this state.*

18 *(3) Sales from the sale, lease, rental, or licensing of real*
19 *property are in this state if the real property is located in this state.*

20 *(4) Sales from the rental, lease, or licensing of tangible personal*
21 *property are in this state if the property is located in this state.*

22 *(b) The Franchise Tax Board may prescribe regulations as*
23 *necessary or appropriate to carry out the purposes of this section.*

24 28137. *If the allocation and apportionment provisions of this*
25 *article do not fairly represent the extent of the taxpayer's market*
26 *in this state, the taxpayer may petition for or the Franchise Tax*
27 *Board may require, in respect to all or any part of the taxpayer's*
28 *business activity, if reasonable:*

29 *(a) Separate accounting.*

30 *(b) The exclusion of any one or more of the factors.*

31 *(c) The inclusion of one or more additional factors which will*
32 *fairly represent the taxpayer's business activity in this state.*

33 *(d) The employment of any other method to effectuate an*
34 *equitable allocation and apportionment of the taxpayer's net*
35 *receipts.*

36 SEC. 142. *Section 35004 is added to the Revenue and Taxation*
37 *Code, to read:*

38 35004. *This part shall remain in effect only until January 1,*
39 *2013, and as of that date is repealed, unless a later enacted statute,*

1 *that is enacted before January 1, 2013, deletes or extends that*
2 *date.*

3 *SEC. 143. Chapter 11 (commencing with Section 38909) is*
4 *added to Part 18.5 of Division 2 of the Revenue and Taxation*
5 *Code, to read:*

6
7 *CHAPTER 11. REPEAL*
8

9 *38909. This part shall remain in effect only until January 1,*
10 *2013, and as of that date is repealed, unless a later enacted statute,*
11 *that is enacted before January 1, 2013, deletes or extends that*
12 *date.*

13 *SEC. 144. Chapter 12 (commencing with Section 60710) is*
14 *added to Part 31 of Division 2 of the Revenue and Taxation Code,*
15 *to read:*

16
17 *CHAPTER 12. REPEAL*
18

19 *60710. This part shall remain in effect only until January 1,*
20 *2013, and as of that date is repealed, unless a later enacted statute,*
21 *that is enacted before January 1, 2013, deletes or extends that*
22 *date.*

23 *SEC. 145. Section 976.6 of the Unemployment Insurance Code*
24 *is repealed.*

25 ~~976.6. In addition to other contributions required by this~~
26 ~~division, every employer, except an employer defined by Section~~
27 ~~676, 684, or 685, and except an employer that has elected an~~
28 ~~alternate method of financing its liability for unemployment~~
29 ~~compensation benefits pursuant to Article 5 (commencing with~~
30 ~~Section 801), or Article 6 (commencing with Section 821) of~~
31 ~~Chapter 3, shall pay into the Employment Training Fund~~
32 ~~contributions at the rate of 0.1 percent of wages specified in Section~~
33 ~~930. The contributions shall be collected in the same manner and~~
34 ~~at the same time as any contributions required under Sections 977~~
35 ~~and 977.5.~~

36 *SEC. 146. The amendments made by this act to Part 10.2*
37 *pertaining to Part 12 (commencing with Section 27001) of the*
38 *Revenue and Taxation Code shall apply to taxable years beginning*
39 *on or after January 1, 2012.*

1 *SEC. 147. No reimbursement is required by this act pursuant*
2 *to Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 *SEC. 148. This act provides for a tax levy within the meaning*
11 *of Article IV of the Constitution and shall go into immediate effect.*

12 ~~SECTION 1. Section 22352 of the Vehicle Code is amended~~
13 ~~to read:~~

14 ~~22352. The prima facie speed limits are as follows and shall~~
15 ~~be applicable unless changed as authorized in this code and, if so~~
16 ~~changed, only when signs have been erected giving notice of that~~
17 ~~speed limit:~~

18 ~~(a) Fifteen miles per hour:~~

19 ~~(1) When traversing a railway grade crossing, if during the last~~
20 ~~100 feet of the approach to the crossing the driver does not have~~
21 ~~a clear and unobstructed view of the crossing and of any traffic on~~
22 ~~the railway for a distance of 400 feet in both directions along the~~
23 ~~railway. This subdivision does not apply in the case of any railway~~
24 ~~grade crossing where a human flagman is on duty or a clearly~~
25 ~~visible electrical or mechanical railway crossing signal device is~~
26 ~~installed but does not then indicate the immediate approach of a~~
27 ~~railway train or car.~~

28 ~~(2) When traversing any intersection of highways if during the~~
29 ~~last 100 feet of the driver's approach to the intersection the driver~~
30 ~~does not have a clear and unobstructed view of the intersection~~
31 ~~and of any traffic upon all of the highways entering the intersection~~
32 ~~for a distance of 100 feet along all those highways, except at an~~
33 ~~intersection protected by stop signs or yield right-of-way signs or~~
34 ~~controlled by official traffic control signals.~~

35 ~~(3) On any alley:~~

36 ~~(b) Twenty-five miles per hour:~~

37 ~~(1) On any highway other than a state highway, in any business~~
38 ~~or residence district unless a different speed is determined by local~~
39 ~~authority under procedures set forth in this code.~~

1 ~~(2) When approaching or passing a school building or the~~
2 ~~grounds thereof, contiguous to a highway and posted with a~~
3 ~~standard “SCHOOL” warning sign, while children are going to or~~
4 ~~leaving the school either during school hours or during the noon~~
5 ~~recess period. The prima facie limit shall also apply when~~
6 ~~approaching or passing any school grounds which are not separated~~
7 ~~from the highway by a fence, gate, or other physical barrier while~~
8 ~~the grounds are in use by children and the highway is posted with~~
9 ~~a standard “SCHOOL” warning sign. For purposes of this~~
10 ~~subparagraph, standard “SCHOOL” warning signs may be placed~~
11 ~~at any distance up to 500 feet away from school grounds.~~

12 ~~(3) When passing a senior center or other facility primarily used~~
13 ~~by senior citizens, contiguous to a street other than a state highway~~
14 ~~and posted with a standard “SENIOR” warning sign. A local~~
15 ~~authority is not required to erect any sign pursuant to this paragraph~~
16 ~~until donations from private sources covering those costs are~~
17 ~~received and the local agency makes a determination that the~~
18 ~~proposed signing should be implemented. A local authority may,~~
19 ~~however, utilize any other funds available to it to pay for the~~
20 ~~erection of those signs.~~